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220

United States
Circuit Court of Appeals

For the Ninth Circuit.

Vol

2325

see Vol 2326

STERLING CARR, as Trustee in Bankruptcy
of NIPPON YUSEN KABUSHIKI KAI-
SYA, a Corporation, Bankrupt, and FIDEL-
ITY AND DEPOSIT COMPANY OF MARY-
LAND, a Corporation,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION,
LTD., a Corporation, and J. M. ANDERSEN,
Appellees.

(And Fourteen Consolidated Appeals.)

Apostles on Appeal

In Three Volumes

FILED

VOLUME II

AUG 20 1942

Pages 477 to 959

PAUL P. O'BRIEN,
CLERK

Upon Appeals from the District Court of the United States
for the Southern District of California,
Central Division



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**United States Circuit Court of Appeals
For the Ninth Circuit**

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Upon Appeals from the District Court of the United States
for the Southern District of California,
Central Division

GERALD T. JONES,

a witness called by and on behalf of the libelants, having been first duly sworn, testified as follows:

The Clerk: State your name.

A. Gerald T. Jones.

Direct Examination

Q. By Mr. Cluff: Mr. Jones, you were a witness to the collision between the "Olympic" and the "Sakito Maru"? A. Yes.

Q. And you witnessed that from your own little vessel, called the "Pat"?

A. That is right.

Q. What time did you arrive on the fishing grounds with the "Pat", on the morning of the collision?

A. I would say I was there about fifteen minutes before the collision.

Q. Who was with you on the "Pat"?

A. Mr. Harris.

Q. Mr. Harris? A. Yes.

Q. Anyone else? A. And his boy. [133]

Q. How old is the boy?

A. He is about eleven or twelve, I guess.

Q. Just tell us very briefly what sort of a boat the "Pat" is; how long?

A. It is 23.11 feet long, and 6½ feet beam.

Q. A little pleasure fishing craft?

A. That's right.

Q. You were not commercially fishing; just out for pleasure?

(Testimony of Gerald T. Jones.)

A. Pleasure fishing.

Q. What is your occupation?

A. Fireman.

Q. City fireman? A. Yes.

Q. I want to show you "Olympic's" Exhibit Number 4, which purports to be a delineation of the relative positions of the three barges, as they lay on the Horseshoe Kelp, to which Mr. Grothe of the "Marell", has added the position of his vessel with reference to the "Olympic" barge. Do those relative positions of the barges disagree as to distance, or anything like that, coincident with your recollection of how the three barges lay with reference to each other?

A. That is just about the picture.

Q. I wish you would take this pencil, and draw in the point where the "Pat" came to anchor, A trifle further to the east from the "Olympic", and also a little to the north. [134]

A. That is right.

Q. Than to the "Marell"? A. Yes.

Mr. Adams: Further east from the "Olympic"?

Mr. Cluff: A trifle to the eastward, and somewhat to the south of her. You were anchored with the stern to the sea.

A. The stern was to the west, and the bow was to the east.

Q. Suppose you draw in there just about how you lay. Do you know how the tide was? Were you swinging on the tide with just one anchor?

(Testimony of Gerald T. Jones.)

A. That was all; just one anchor.

The Court: Mark that with a "P".

Mr. Cluff: We will mark this "P" for "Pat". So far as you can tell, were you lying the same way, or in a different way than the little "Marell" was lying?

A. As nearly as I can remember, their bow was to us.

Q. Their bow was toward your side?

A. So far as I can remember, yes.

Q. Did you engage in fishing as soon as you arrived there?

A. It took us, to put down the anchor, about five minutes, I guess.

Q. Where did you come from, as you came out?

A. From the Los Angeles breakwater.

Q. Right out through the Los Angeles breakwater? A. Yes.

Q. As you approached the barge, what was the condition of [135] the weather with respect to fog or clearness?

A. Coming out, the visibility was about, I would say, approximately three hundred yards.

Q. About how far, approximately three hundred yards? A. All the way out.

Q. What was the first barge you saw, if you remember? A. The "Point Loma."

Q. About how far away was she when you made her out through the fog?

A. I would say about three hundred yards, approximately.

(Testimony of Gerald T. Jones.)

Q. About three hundred yards; then did you later make out the "Olympic"?

A. Shortly afterward, yes.

Q. Shortly after you made out the "Point Loma" you could also make out the "Olympic"?

A. Yes.

Q. About the same visibility? A. Yes.

Q. About three hundred yards? A. Yes.

Q. When you took your position at anchor, from then on did the visibility change?

A. Quite rapidly.

Q. How did it get, lighter or thicker?

A. Started to lighten up.

Q. What? [136]

A. The fog started raising.

Q. The fog started to lighten from the time you anchored? A. That's right.

Mr. Adams: Started to raise, the witness said.

Q. By Mr. Cuff: Started to raise?

A. Thin out.

Q. When you say raise, did you mean to go up in the air, or did you mean to get less dense?

A. Less dense.

Q. As you approached the barges could you hear the bells ringing? A. Yes, on all the barges.

Q. Would you describe about the way those bells were ringing?

A. Well, I would say they would ring about around minute intervals.

Q. About a minute interval? A. Yes.

(Testimony of Gerald T. Jones.)

Q. And in peals of dang, dang, dang, repeated peals? A. That's right.

Q. As you came to anchor, could you pick out the "Olympic" bell, distinguish that? A. Yes.

Q. Did you hear that ringing?

A. That was ringing.

Q. Did it ring continuously from that time until the [137] collision?

Mr. Adams: I think that is leading and suggestive.

The Court: It is leading.

Mr. Cluff: Yes, that it leading. I withdraw it. Put it this way: You heard the "Olympic's" bell ringing when you anchored? A. That is right.

Q. State how long that ringing continued with reference to the collision.

A. It was ringing the whole time till—

Q. How about the other barges?

A. They were ringing; all ringing.

Q. I wonder if you will take this little bell? I will hold it here for you, and see if you can ring a peal such as your heard from the "Olympic"? Did anybody catch the time? Did you, Mr. Adams?

Mr. Adams: No, you didn't loan me your watch this time.

Mr. Bullard: I was timing the witness. I timed it five seconds, as nearly as I could determine.

Mr. Cluff: Will you stipulate that is about right?

Mr. Adams: I will stipulate that is what Mr. Bullard timed it at.

Q. By Mr. Cluff: Were the other barges ringing about the same way, Mr. Jones.

(Testimony of Gerald T. Jones.)

A. Just about the same way.

Q. Did you hear, after you came to anchor, the whistles [138] of any other vessels?

A. I did not hear none, no.

Q. At any time? A. No, sir.

Q. When was the first indication that you had of the nearness of the Japanese vessel, the "Sakito Maru"?

A. Well, I did hear the "Sakito Maru" whistle. I am positive that was it—just before it loomed up out of the fog.

Q. Then you did hear the whistle of some vessel at some time after you came to anchor?

A. Yes.

Q. About how long was this, as nearly as you can tell, after you came to anchor?

A. It was quite a while after we came to anchor.

Q. Can you give us any idea in minutes?

A. No, I can not.

Q. After you heard that whistle, did you see any vessel approaching? A. Not right away, no.

Q. How long after the whistle was it before you saw any vessel? A. I would say a minute.

Q. About a minute after you heard this whistle? Did you hear more than one whistle?

A. That was all I heard.

Q. And then a vessel appeared? [139]

A. That is all I know.

Q. From what direction did the vessel appear?

A. As nearly as I can recollect it was from the south.

(Testimony of Gerald T. Jones.)

Q. I show you again the little drawing where you have drawn in the "Pat", and will you state in what direction the vessel appeared.

A. About something like that.

Q. I wonder if you would take the pencil and just make a little cross in the direction from which the Japanese vessel first approached? Just make a cross.

A. Well, in my mind that was about like that.

Q. All right. Just about like that over to the southeast from where the "Pat" was lying?

The Court: Mark that "J".

Mr. Cluff: Yes, just mark this "J".

The Court: If you will put a cross on top of that "J" we will be able to figure out what it is.

Mr. Cluff: It is like half an anchor now.

Mr. Adams: May I inquire what this is to represent, this "X"?

Mr. Cluff: The direction from which the "Sakito" approached. The direction from which the "Sakito" approached the "Pat".

Mr. Adams: From the "Pat"?

Mr. Cluff: From the "Pat", the "Pat" being indicated here.

Q. When you saw that vessel how far away did she appear to you? [140]

A. Well, I would say about, about three lengths of the "Sakito Maru".

Q. About three lengths of the "Sakito". The "Sakito" was five hundred feet long or thereabouts. In what direction did she appear to be headed, that

(Testimony of Gerald T. Jones.)

is, how was she moving, in what direction with respect to the "Olympic" or with respect to the "Pat" or any other object that you could see?

A. Well, as near as I could figure out, it was headed for the "Olympic".

Q. Will you try to speak a little louder, Mr. Jones?

A. As near as I can figure out it was headed for the "Olympic".

Q. It will be pretty hard to tell? Which side of her could you see from the "Pat"?

A. Well, I could see, it would be the righthand side.

Q. The righthand side. Could you form any estimate as to how fast she was going?

Mr. Adams: That calls for a yes or no answer.

A. No; I couldn't say.

Q. By Mr. Cluff: Could you see any bow wave, water thrown up by her bows?

A. Yes; I could see it.

Q. About how long was it between the time you first saw her at the place you have indicated and the collision?

A. Oh, possibly be a minute and a half.

Q. About a minute and a half. now, following the time [141] you sighted her what course did she appear to follow to you?

A. Well, north to the south—from the south to the north, something like that.

Q. From south to north; and towards or away from the "Olympic"?

(Testimony of Gerald T. Jones.)

A. Away from the "Olympic."

Q. What is that?

A. Away from it.

Q. And away from the "Olympic". That is, away from the "Olympic" and across her bow or across her stern?

A. Across the, across the—well, across the stern, I guess, or the bow. Across the bow.

Q. Across the bow. That is, the bow was away from you? A. Yes.

Q. And the stern of the "Olympic" was toward you. Now, did you notice her change her course in any way? [142]

A. I did not.

Q. So far as you know, she did not change her course at all? A. No.

Q. Did you see her strike the "Olympic"?

A. No. From the view we had, we didn't see the impact.

Q. What is that?

A. From where we was we couldn't see it.

Q. Your position was where, to the starboard side of the "Olympic" and not the port side?

A. That is right.

Q. Were you able to hear the collision?

A. Yes; we heard the crash.

Q. What did it sound like?

A. Well, just a loud crash.

Q. Just a loud crash. As the "Sakito" approached the "Olympic" did you have a clear view of her forward deck? A. Yes.

(Testimony of Gerald T. Jones.)

Q. Did you see any person or any man—

Mr. Adams: Now, just a minute. If the court please, I move that that previous answer be stricken as a conclusion of the witness as to whether he had a clear view of the forward deck. I think it is quite obvious that any person lying on the water in a small boat would not have a clear view of this forward deck. [143]

The Court: Well, I think that is probably true.

Mr. Cluff: The witness has said he had a clear view.

Mr. Adams: Well, I move it be stricken as a conclusion as to whether he had a clear view or not. Let him testify—

The Court: Well, he can testify. He asked the question and he said he had a clear view. I don't see how he could have a clear view of the boat in the water and the height of that boat above the water, but he so testified. It simply goes to the weight of the testimony.

Q. By Mr. Cluff: Showing you "Olympic's" Exhibit 5, and I will ask you if that is a picture of the vessel you saw that morning?

A. Yes; I think that is the vessel.

Q. And that is the vessel. Speak just as loud as you can, Mr. Jones. There are a number of people here. Directing your attention to a point right up in the eyes of the vessel here, right up where the two bows come together, did you see the figure of a man there with his body above the waist above the height of the bulwark?

(Testimony of Gerald T. Jones.)

A. I saw no one.

Q. Or any part of the figure of a man?

A. No, sir.

Q. Did you particularly look to see if there was a person on the forward deck?

Mr. Adams: Objected to as leading and suggestive.

The Court: It is leading and suggestive. [144]

Mr. Cluff: Withdraw it.

Q. As the "Sakito Maru" approached the "Olympic" did you hear any change in the ringing of the "Olympic's" bells?

A. Just before it hit they speeded up the bell.

Q. Just describe a little more in detail how they speeded up. Was it longer peals or what happened?

A. Well, just before the crash there was a steady beat.

Q. A steady beat all the time, that is, long intervals. About how long did it seem to you that that went on?

A. It wasn't very long. I wouldn't know just how long it was.

Q. Do you know about how far, in lengths of the "Sakito Maru", she was from the "Olympic" at the time that ringing started?

A. Well, about a length, I guess.

Q. About a length? A. Before.

Q. Did the "Sakito Maru" seem to slow down as she approached the "Olympic"?

(Testimony of Gerald T. Jones.)

A. I don't believe so.

Q. The rate of speed appeared to you to be about the same?

A. About the same at all times.

Q. After the crash took place what happened with [145] respect to the two vessels?

A. Will you repeat that?

Q. That is, did they move from their positions; did the "Olympic" move from her position?

A. It seems as though that at about, I would say, 50 feet she pushed the "Olympic" about 50 feet, from the way it looked to me.

Q. Was that so from your position in the "Pat" you could still see the starboard side or could you see it? A. Of the "Olympic"?

Q. Of the "Olympic".

A. Yes; I could still see the starboard side.

Q. How is that?

A. I could still see the starboard side.

Q. You could still see the starboard side.

Mr. Adams: Does the witness mean after the "Olympic" came to rest?

Mr. Cluff: Yes.

Q. Was that after the "Olympic" came to rest you could still see the starboard side?

A. Yes, sir.

Q. Did the "Olympic" take a heel or a tilt over to starboard, do you know?

A. Not as I remember.

Q. Not that you recall?

A. No. [146]

(Testimony of Gerald T. Jones.)

Q. Following the time the two vessels came to rest what happened next?

A. Well, when they came together it seems as though that they either—I don't know if he used his power to reverse, but anyway, he backed up.

Q. The vessels separated. And did the distance between them continuously widen?

A. Yes, sir.

Q. Were you in a position to see the stern of the "Sakito Maru" where the screws turn?

A. No, sir.

Q. What did you, with your partner, do on the "Pat" about the time of the impact?

A. Well, Mr. Harris, he pulled the anchor and I took the wheel.

Q. You took the wheel. And then did you move somewhere?

A. Well, we went on over to the wreck from there after he got the anchor up but while he was getting the anchor up the "Olympic" already went under.

Q. The "Olympic" went down while you were getting the anchor up; and then you went over and joined the other boats in the search for survivors? A. That is right.

Q. After the impact did you see any man on the forward deck of the "Sakito Maru"? [147]

A. I did not.

Q. After the impact you did not?

A. Oh, yes. Just when it hit there was someone run up, run up forward.

(Testimony of Gerald T. Jones.)

Q. That is, ran from the bridge deck up towards the forecastle head?

A. Run from the middle up to the bow.

Q. Let me show you the "Olympic" 6, a picture showing the forecastle head and a part of the well deck, starboard side, "Sakito Maru". If I understand you correctly, the man you saw was coming from back here and going forward?

A. Yes; it seems like it was right in here somewhere.

Q. Right in there, indicating a position on the well deck just aft of the break of the forecastle head.

Mr. Adams: That is correct.

Q. By Mr. Cluff: As the "Sakito Maru" struck the "Olympic" did you hear any whistles from the "Sakito Maru" or thereabouts, either before or after?

A. Just before they whistled, but I don't know how many times.

Q. Would you say that it was more than one whistle? A. I couldn't say.

Q. And with reference to the time of the impact about how long before?

A. Well, it wasn't but just a few seconds. [148]

Q. Just a few seconds. Did you see any lifeboat from the "Sakito Maru" after the collision?

A. Not right away.

Q. How long after? A. About 20 minutes.

Q. About 20 minutes afterwards?

A. I would say 20 minutes.

Q. And where did that lifeboat come from?

A. The first time I noticed the lifeboat was when

(Testimony of Gerald T. Jones.)

they approached the wreck and that was to the left of the wreck.

Q. How did you identify it as a lifeboat from the "Sakito Maru"?

A. By the Japanese crew.

Q. The Japanese crew. You have owned the "Pat" for how long, Mr. Jones? A. Two years.

Q. And during that time have you fished around in waters around San Pedro Bay quite a bit?

A. Yes, sir.

Q. And on Horseshoe Kelp where the barges lie?

A. Mostly Horseshoe Kelp.

Q. How long have you known of the fishing on Horseshoe Kelp? A. About two years.

Q. And you have fished there for two years? [149] A. Yes.

Q. About how often did you get out there?

A. I averaged about twice a month.

Q. Averaged about twice a month. That has been true during the past two years?

A. Well, during the fishing season, just the summer months.

Q. Just the summer months. When you say just the past two years, do you mean the two years, that is, 1940 and 1941, or 1939 and 1940?

A. 1939 and 1940. 1929—1939 and 1940.

Q. During that time did you have occasion to observe what vessels fished on Horseshoe Kelp?

A. All types of—

Mr. Adams: I object to this question and this line of questioning upon the same grounds as I have

(Testimony of Gerald T. Jones.)

The Court: The same ruling.

Mr. Adams: I might add this further objection: That I think the experience of this witness is considerable less than the other and the objections are stronger in this case than in the other case as to his experience and occasion to make any observations out there.

The Court: He was out there for two years. He is testifying to what he saw. That is all either one could testify to. You may proceed. [150]

Mr. Cluff: Will you read the question, please, Mr. Bargion?

(Question read by the reporter.)

A. Well, there is all types of sports fishermen and commercial fishermen.

Q. Have you been out there on Sundays, Saturdays, Sundays and holidays, as well as week days?

A. Quite a few times; yes.

Q. Could you give the court an idea of about how many vessels fish around in the area of the three barges on, say, Saturdays and Sundays or holidays during the season?

Mr. Adams: My objection goes to this whole line of questioning. Does the court understand that to be the case?

The Court: Yes.

A. I would say there was—well, sometimes 75 to 100, as high as 75 to 100 out there on holidays and Sundays.

Q. By Mr. Cluff: At all times during the fish-

(Testimony of Gerald T. Jones.)

ing season there are a number of vessels besides the two or three fishing barges? A. Yes.

Q. By the Court: That is, when you happen to be out there? A. Yes, your Honor.

Q. By Mr. Cluff: What type of vessels, different types of vessels have you seen there?

A. Oh, there is these live bait boats and also all [151] kinds of fishing, all kinds of commercial fishing boats.

Q. Have you ever seen any purse seiners, big nets, you know?

A. No; I have never seen no purse seiners.

Q. Sports fishermen of all kinds?

A. Yes, sir.

Q. As well as commercial vessels like the "Marell"? A. That is right.

Q. You are not a claimant here and have no interest in this case whatsoever, Mr. Jones?

A. No.

Mr. Cluff: That is all.

Mr. Adams: Just a minute, Mr. Jones, please.

The Court: Just a moment.

Cross-Examination

Q. By Mr. Adams: Mr. Jones, how high above the surface of the water was the deck of the "Pat" as you anchored there that day?

A. Oh, I would say about two feet.

Q. About two feet? A. That is right.

Q. Isn't it a fact, Mr. Jones, that you saw the lifeboat of the "Sakito" about 10 minutes after the impact? Wouldn't that be more accurate?

(Testimony of Gerald T. Jones.)

A. It seems like it was around 20 minutes. [152]

Q. Do you recall having testified before the C-board on the day of this collision? A. Yes, sir.

Q. At San Pedro?

A. Yes; I remember something.

Q. I want to refer to your testimony given at that time and ask you if you recall this question being asked you and you giving this answer, on page 3 of that transcript:

"Q. Did you afterwards see any of the steamer's life-boats in the water?

"A. Not right away. They didn't put any life-boats in for—the first time we noticed them was a good ten minutes."

Does that refresh your recollection? Do you wish to change your testimony?

A. Well, at that time I was quite excited and I had to go to work, see, and I was pushed for time and I wanted to get out and get back to work, see; and they rushed it right through and I didn't get a chance to really think it out.

Q. Is that the impression—

The Court: May I ask what difference does it make whether it was 10 or 20 minutes?

Mr. Adams: Well, there is a charge, if the court please, that the "Sakito Maru" just anchored there and did nothing. I am endeavoring to demonstrate— [153]

The Court: I know, but even if it did not do anything there was nothing to be done, according to the statements, as I understand it. There were other

(Testimony of Gerald T. Jones.)

boats right there and everybody that it was possible to pick up by other surrounding boats were picked up, so that even if you had gotten your lifeboats down, it would not have either added or detracted.

Mr. Adams: I agree with the court.

The Court: I just want to know and hear from counsel on that. There is no argument about this boat. The two boats separated and they pulled back a certain distance. In due time it let its anchor down and in due time lifeboats came out. But whether it was 10 or 20 minutes, what difference does it make?

Mr. Cluff: As far as the Hermosa and Captain Anderson are concerned, that the failure, if it was a failure, of the "Sakito" to get a lifeboat in the water has contributed in any way to the damages here, I don't know. We pleaded it at the time the answers were drawn, but I don't, perhaps, as I see the case now, make a point on it.

The Court: Let us proceed, gentlemen.

Mr. Adams: If counsel will eliminate that as an issue, I will certainly eliminate it from my question.

The Court: Well, the court is going to eliminate it, anyhow, unless counsel can show where it is of some materiality. So far as this court is concerned, the facts indicate here that this other boat was right there on the [154] job and able to pick up anybody. and if there had been 40 lifeboats out there, they probably couldn't have done any more than they had done.

(Testimony of Gerald T. Jones.)

Mr. Lippert: Your Honor, I would like to refer to the statute governing the situation, on behalf of intervening libelant Frank Mayo, that there was a duty imposed upon the master of the vessel to furnish us by way of lifeboat. I think we have pleaded it, likewise.

The Court: I know, but what difference does it make whether it came down in 10 minutes or 20 minutes?

Mr. Lippert: It would go to the question of negligence.

The Court: All right, gentlemen, you can spend all the time you want here, but I am going to work you 10 hours a day if you are going to do it, if you are going to waste your time on a lot of immaterial matters. We are interested in what caused this collision and what happened afterwards. There might be some question on this withdrawal of this boat, the separation. There may be some point to that, but as far as this court is concerned, you can make your record. But I am not going to pay much attention to the question of rescue, letting down the lifeboats, whether it was 10 minutes or 20 minutes.

Mr. Adams: Of course, I might say that our testimony will show that it was done right immediately that the anchor dropped.

The Court: It took you some time to get back where [155] you could drop your anchor.

Mr. Adams: Obviously.

The Court: So there were several minutes

(Testimony of Gerald T. Jones.)

elapsed; so I don't see what difference it would make.

Q. By Mr. Adams: Mr. Jones, did you see the "Sakito" and the "Olympic" at the sound of the impact?

A. Not a full view. I just saw the—well, just the top of the "Sakito Maru", you know, just above the—see, it is quite a bit higher than the "Olympic".

Q. Yes. Let me ask you this question: When you first saw the "Sakito Maru", which was some distance away, how much of that vessel could you see at that time? A. Before they hit?

Q. Yes; the first time you saw the "Sakito".

A. We had a full view.

Q. Were you able to see all of her superstructure? A. Quite so.

Q. Could you see her masts clear to the top?

A. I didn't particularly pay no attention to that.

Q. I see. Then after the impact did you continue to watch the two vessels until the "Olympic" came to rest? A. Yes, sir.

Q. When was it that you noticed that the "Sakito" was separating from the "Olympic" with reference to the time that the "Olympic" came to rest; was it before or after the "Olympic" came to rest? [156]

A. Well, it was after, as near as I can recollect, it was afterwards, after the "Olympic" come to rest.

Q. And was it just almost immediately afterwards?

(Testimony of Gerald T. Jones.)

A. As far as seconds or minutes I wouldn't know.

Q. Well, do you have an impression of any appreciable length of time elapsing after the "Olympic" came to rest before the "Sakito" pulled out from the hull?

A. I wouldn't know, I wouldn't know.

Q. Would you say it was less than a minute?

A. Why, as near as I can—

Q. Or you just don't have any recollection?

A. No; I don't.

Q. How many fog signals of the "Sakito" did you hear before you sighted her?

A. As near as I remember, it was one.

Q. Do you think it might have been more than that? Are you sure it was only one?

A. I wouldn't be sure.

Q. What were you doing just a little before you heard this whistle which you later thought was the "Sakito's" whistle?

A. I was—when I heard the first whistle we were rigging up our bait tank.

Q. And had you been doing that several minutes before that time?

A. Well, we was getting ready to fish and Mr. Harris, [157] he was fishing and I was getting the bait tank ready.

Q. You were busy aboard the boat?

A. Yes, sir.

Q. Doing the odd jobs, for several minutes prior to the time you heard the "Sakito" whistle, was that correct? A. That is right.

(Testimony of Gerald T. Jones.)

Q. Were you listening for whistles?

A. Yes; we was listening for whistles.

Q. Did you have your own bell sounding?

A. We had—no; it wasn't. When we got out there the fog was lifted enough where we felt like we didn't need to ring the bell. [158]

Q. How far do you think visibility was at that time?

A. Well, when we first got there it was a good three hundred yards.

Mr. Cluff: May I have that answer, Mr. Bargion, please?

The Court: It was a good three hundred yards when he first got there.

Q. By Mr. Adams: You considered then, that you did not need to sound fog signals? A. No.

Q. Were the bells being sounded on the barges adjacent? A. Of the barges.

Q. By the Court: How long after you arrived there did you first see the "Sakito Maru"?

A. Well, I would say it was about—when it first appeared, it was about, I would say, about fifteen minutes.

Q. In other words, about fifteen minutes elapsed?

A. Yes, sir.

Q. Was the visibility greater at the time you saw the "Sakito Maru" than at the time you arrived?

A. The fog was thinning out, your Honor.

Q. So that when you arrived the visibility, as you figured, was about three hundred yards?

(Testimony of Gerald T. Jones.)

A. When we arrived.

Q. Then, what was your figure as to visibility at the time you first saw the "Sakito Maru"?

A. Oh, it was, I would say, oh, approximately maybe two [159] miles in that twenty minutes. When we got there the fog was thinning fast.

Q. You think it was.

Mr. Adams: May I have that answer and that question, please?

A. When we first arrived—

Mr. Adams: I mean't the reporter, Mr. Jones.

The Court: Yes, let the reporter read it.

(Answer read by the reporter.)

Q. By the Court: What first attracted your attention to the "Sakito Maru"? Were you looking for it? A. No, sir. We—

Q. Did you just happen to look up there and see it coming?

A. We would probably have seen it sooner if we had looked.

Q. In other words, when you looked up you saw the "Sakito Maru" there how far away?

A. I would say it was about three lengths from the "Olympic".

Q. And the whole ship was visible to you at that time?

A. We had a very good view, your Honor.

Q. But that was the first time you had seen it?

A. That we noticed it.

Q. And whether you could have seen it a greater distance or not you don't know?

(Testimony of Gerald T. Jones.)

A. I don't know. [160]

Q. By Mr. Adams: Mr. Jones, do I assume that at that time you judged the visibility to be about two miles?

A. Well, it approximately was somewhere around there.

Q. Somewhere around two miles?

A. I don't know just how far the "Rainbow" barge was, but you could see that. You could see the "Rainbow" barge.

Q. And it was at that time when you first saw the "Sakito" three lengths away from the "Olympic"? A. Yes, sir.

Q. And it was not until the "Sakito" was one length away from the "Olympic" that you heard a continuous ringing of the "Olympic" bell, is that correct? A. Yes.

Q. How often prior to that time that you heard a continuous ringing of the "Olympic" bell had you heard her bell?

A. Well, the whole time that we were there we heard it. He rang her bells about every—I don't know. They would ring them, maybe a minute, then it would not ring again for maybe a minute, or something like that.

Q. Do you think it rang steadily for an entire minute?

A. Well, maybe not a minute. It is hard to say any more.

Q. Let me refer to your testimony before the

(Testimony of Gerald T. Jones.)

Sea Board on September 4, 1940. You were the first witness, I believe, at that hearing which was convened at 10 o'clock p.m. This was just about six hours after the collision, wasn't it?

A. Somewhere around there. [161]

Q. On page 2. See if you recall this question and your giving this answer:

"Q. Will you describe to the Board the happenings from the moment you were aware an accident had occurred on the fishing barge "Olympic II"?"

"A. Well, all I can say, we heard the fog whistle on the Japanese boat and we heard it but we didn't see it. We also heard the bell on the barge.

"Q. Which did you hear first?

"A. We heard the bell. The bell was continuously going on the barge and the whistle on the Japanese boat, I imagine, seemed like every two minutes or something like that."

Does that refresh your recollection?

A. The bell?

Q. Yes; the bells and also as to hearing the whistle of the Japanese boat more than once because you had estimated—I take it your answer had reference to something; when you say "seemed like every two minutes", that your answer had reference to the Japanese boat also?

A. Well, when we first heard it, before we seen it we heard it, but I didn't pay no attention then, went to work on our bait tank, and the next time it whistled, as near as I recollect, it was just before the crash, as near as I can remember.

(Testimony of Gerald T. Jones.)

Q. Do you recall having given that testimony before the C-Board? [162]

A. Yes; I believe I do.

Mr. Adams: No further questioning. Just a minute, please. No further questioning.

The Court: Any further questions, gentlemen?

Mr. Cluff: Anyone else any questions?

Mr. Eastman: Your Honor, I would like to ask some questions:

Cross-Examination

Q. By Mr. Eastman: You remained in the vicinity of the collision for some little time afterwards, Mr. Jones. Was your boat in the vicinity where the "Olympic" was? A. Yes, sir.

Q. Did you rescue any of the survivors?

A. No; we didn't.

Q. Pick up any bodies? A. No, sir.

Mr. Eastman: That is all, thank you.

Mr. Cluff: One question I neglected to ask on direct.

Redirect Examination

Q. By Mr. Cluff: As the two boats separated after the collision did you hear any noise?

A. When they pulled away?

Q. Yes; when they separated.

A. No; I can't say that I do right now.

Q. You don't recall hearing any noise at all? [163] A. No.

Q. Did you see any disturbance of the "Olympic's" decks or structure?

(Testimony of Gerald T. Jones.)

A. No; I didn't.

Mr. Cluff: That is all.

The Court: That is all. Call your next witness.

Mr. Cluff: Mr. Harris. [164]

LLOYD A. HARRIS,

called as a witness on behalf of the libelant, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. Lloyd A. Harris.

The Clerk: Lloyd A. Harris. Take the stand.

Direct Examination

Q. By Mr. Cluff: Mr. Harris, you were with Mr. Jones on the "Pat" on the morning of the collision between the "Sakito" and the "Olympic"?

A. That is right.

Q. I show you the position with reference to the "Olympic" as designated by Mr. Jones a moment ago, and ask if that coincides with your recollection, this being the "Olympic", the "Point Loma", the "Rainbow", the "Little Marell" and the "Pat"? If there is anything there that does not—

A. If I remember right, I believe the boat was swinging more in a position like this.

Q. That is, more in the heading of the "Marell"?

A. If anything, a little bit closer to the "Olympic", right approximately there.

Q. Otherwise, is the general setup—

(Testimony of Lloyd A. Harris.)

A. Because I was fishing over the side where I had very nearly a complete view of the landing platform of the "Olympic". [165]

Q. So that the best, as you understand it, it was riding a little more south on her anchor?

A. Yes; I believe a little more like that.

Q. And possibly a little more to the "Olympic" than Mr. Jones' pictured? A. Yes.

The Court: That is not supposed to be according to distances, anyhow.

Mr. Cluff: Oh, no.

Q. You arrived at what time?

A. Well, I don't know the definite time of arrival or anything, but somewhere around seven o'clock.

Q. Approximately?

A. A few minutes to seven.

Q. A few minutes to seven or seven o'clock.

A. That is right.

Q. You came out through the breakwater?

A. That is right.

Q. As you approached the barges could you hear their bells? A. Yes.

Q. Could you hear them before you saw them?

A. Yes; we did.

Q. About how long before you saw them?

A. Oh, that is very hard to state the time. I didn't pay any particular attention to the time at all. [166]

Q. But you could hear the bells from all the barges? A. That is right.

(Testimony of Lloyd A. Harris.)

Q. Do you remember which was the first barge you could see? A. The "Point Loma".

Q. And then did you later see the "Olympic"?

A. That is right.

Q. About what was the visibility at the time you first saw the "Point Loma"?

A. Well, I would say that we saw the "Point Loma" about as we were approaching the "Point Loma", we saw it about the same distance as we were able to see the "Olympic", because we were close by the "Olympic"—the "Point Loma", rather, we were able to see the "Olympic" barge.

Q. Yes.

A. Though the distance there between them I don't know, but that would be just about—

Q. The distance between the two?

A. That is right.

Q. Could you see the "Rainbow" barge as you came up?

A. Yes. It was rather dim. In fact, at times as we approached it—

Q. Did you go astern of the "Point Loma" or around her bows to get to your position?

A. I think we passed to the stern.

Q. Passed to the stern? [167]

A. I am not certain about that.

Q. As you passed to the stern you could see the "Rainbow" barge hazily in the distance?

A. Yes; you could dimly, very dimly, make out the outline.

(Testimony of Lloyd A. Harris.)

Q. After you reached your anchorage and dropped anchor what did you do next?

A. Proceeded to fish. I did, and my partner was doing some other things.

Q. As you came up to your anchorage and then from then on what was the situation with regard to the bells from the barges?

A. Well, they were jangled enough to get on my nerves. I asked him, told my partner, "I hope the fog soon lifts so they wouldn't bother me."

Q. Could you hear the bells from all three barges? A. Yes, sir.

Q. How were they ringing?

A. Well, intermittently.

Q. What was that?

A. Rather intermittently, like they were answering.

Q. That is, ringing in rotation?

A. That is right.

Q. About what intervals was there between the ringing of the "Olympic" barge?

A. Well, I don't know. They rang quite often.

Q. What was that, rang quite often? [168]

A. Yes.

Q. Did they ring in a series of three, or did there seem to be a steady ringing, one, two, three, four, five, six and so on?

A. No; it was not a steady ringing. It was slow as it went the circle.

Q. There were three would ring, then a break,

(Testimony of Lloyd A. Harris.)

and then three would ring again? A. Yes.

Q. You don't care to make an estimate of the intervals?

A. No; I don't know the time; but I do know we listened to the—

Q. You heard Mr. Jones ring a peal on that bell we *here* a few minutes ago? A. I did.

Q. Would you say that that was a fair representation of the peals you heard from "Olympic"?

A. Yes, sir; I would.

Q. When did you first realize, or when did you first see or hear anything of the vessel that later turned out to be the "Sakito Maru"?

A. Well, after we had been fishing some time, I wasn't sure whether we heard a whistle, a fog whistle or not, but later on while we were—

Q. You heard something you thought was a whistle? A. Yes, sir. [169]

Q. From which direction?

A. From the south, I would say.

Q. It came from the south. Did you hear that repeated? A. Yes.

Q. Later?

A. After, if that was a whistle. We didn't know whether it was or not. [170]

Q. Later you heard something that you knew was a whistle?

A. Yes; heard distinctly a fog horn, a whistle, heard her whistle of some kind.

Q. How many times was that repeated?

(Testimony of Lloyd A. Harris.)

A. We heard it the one time.

Q. You just heard it the one time you could be sure it was a whistle? A. Yes.

Q. With reference to hearing that whistle when did you first observe the "Sakito Maru" appear?

A. Well, not too long after we heard the whistle.

Q. Where did she appear with reference to the "Pat" as she was lying?

A. Well, that would be off—we stood to the—that would be to our left, to me, as I stood facing.

Q. That would be to the left?

A. Left side of our boat.

Q. In the direction on the compass?

A. Well, it would be south, I guess.

Q. Due south?

A. Maybe east, easterly direction, southeasterly direction possibly.

Q. From a point that would be southward between you and the "Olympic", or to the other side of you?

A. Well, it would be pretty much south of us, it seemed to me. [171]

Q. When you first saw that, just what happened to you first?

A. Well, I don't know. It is hard to explain as you look up, and it was quite distinctly to me rather a dark mass, and very soon became a ship.

Q. That is, it first looked like a dark mass and then became a ship? A. Yes. It was not—

Q. When you first saw it as a dark mass—pardon me.

(Testimony of Lloyd A. Harris.)

A. It was not distinctly plain as a ship when I first looked up.

Q. When you first saw it as a dark mass how far away did it appear?

A. Well, that is, it didn't seem so far away, yet it seemed as if it could have been quite a ways.

Q. Later you got a pretty good view of the starboard side of this vessel, I take it?

A. Starboard side, you will have to pardon my—

Q. That is your right-hand side.

A. That is right, after.

Q. After a while?

A. Well, very shortly. It very shortly became quite clear.

Q. What I am trying to get at is if you can give us an idea how far away she first appeared in her own lengths.

A. Well, three to four lengths. [172]

Q. By the Court: Are you able to make an estimate? Are you able to make an estimate?

A. I would say three to four lengths, your Honor.

Q. By Mr. Cluff: Three to four lengths?

A. Yes, sir.

Q. All right.

Mr. Adams: When was this three to four lengths?

A. That is after she became visible.

Q. By Mr. Cluff: My question was when he first made her out.

(Testimony of Lloyd A. Harris.)

Q. By the Court: You say three to four lengths when you first saw this black mass in the distance?

A. That is—no; after, after I was able to discern it as a ship. In fact, my eyes—I suppose, just the length of time it took me to make out from the mass to the ship was the time it took my eyes to focus from a mass to a ship. The thing that made it look to me as a ship was the fact that I made out the emblem on the side of the boat.

Q. By Mr. Cluff: This emblem you refer to is this, showing you "Olympic" 6, this like a red dot or a red or black dot with white background?

A. That is right.

Q. You recognize that as what you saw?

The Court: What is that, a target?

Mr. Cluff: I think it is the Japanese merchant flag. Isn't that right, Mr. Adams? [173]

Mr. Adams: I am sorry, I missed what you called my attention to.

Mr. Cluff: The single dot, without the rising sun stripes, is the Japanese merchant insignia as distinguished from the Navy, isn't it?

Mr. Adams: I am not certain, but it was the insignia for the "Sakito Maru".

The Court: It looks like a target, doesn't it?

Mr. Cluff: It certainly does.

Q. And, as I understand it, shortly after you made her out as a mass, you identified her as a ship. Could you see which way she was heading then?

A. Well, it looked like she was heading just a

(Testimony of Lloyd A. Harris.)

little, would probably be on past the "Olympic" to the westward.

Q. On past the "Olympic's" bow?

A. That is right.

Q. Could you form any estimate of her speed?

The Court: What does this witness know about the speed? A. Well, I don't know.

Mr. Cluff: What is that?

A. I don't know how—

The Court: I don't know how this witness is in a position to estimate its speed.

Mr. Adams: I take it this question calls for a yes or no answer, whether he could form an estimate?

Mr. Cluff: That is all right. Put it this way: [174]

Q. Can you form, or could you form and did you form any idea of the speed at which the "Sakito" was moving along there after you saw her?

A. I really couldn't, on account of I would have to have some object to know my distance to the object that she was.

Q. Do you know the full speed of the "Pat"?

A. No; I don't. I am not familiar with it.

Q. She was not your boat and you were just a guest aboard? A. That is right.

Q. So you did not make and cannot make any estimate of the "Sakito's" sped as she approached you? A. No; I couldn't.

Q. As you approached the "Olympic", as you

(Testimony of Lloyd A. Harris.)

described, could you still hear the bells from the "Olympic" ringing? A. That is right.

Q. Ringing peals, as you described there?

A. That is right.

Q. Did you see the "Sakito Maru" make any change in her course?

A. I don't know whether it was a change or optical illusion of the fog, but it did look like they came in a little closer, if anything. In other words, it turned out toward another quarter somewhat like this, and then it faced around a little bit like that.

Mr. Cluff: The witness indicating by moving his hand to [175] the right.

Q. That is, did the turn appear to be to the "Sakito's" right or left?

A. Well, if it continued like it looked to me when I first saw it, it surely would have passed to the westward of the "Olympic".

Q. Yes. Then the turn back was in toward the "Olympic", closer toward the "Olympic"?

A. It seemed to, just whether it was a turn or what.

Q. When she made that turn how far away from the side of the "Olympic" did she seem to you?

A. Well, it was quite a distance.

Q. In lengths of the "Sakito", or any other standard that you can think of?

A. Well, around possibly four to five lengths maybe.

Q. Four to five lengths?

(Testimony of Lloyd A. Harris.)

A. Something like that.

Q. By the Court: Of the "Sakito Maru"?

A. Yes.

Q. I thought you didn't see it until three or four lengths.

A. Well, it is three or four lengths, that is right.

Q. I know, but you said you didn't see it, I believe, until it was three to four lengths away.

A. Possibly.

Q. Now you say that she made this change five lengths [176] away.

A. That is rather confusing.

Q. There is something wrong there some place on your figuring. A. That is right.

Q. What is it?

A. I would say that it was three to four lengths like I formerly stated.

Q. By Mr. Cluff: At the time she seemed to make her turn?

A. Yes; very soon after I saw it.

Q. Did you notice any change in the ringing of the bells on the "Olympic" about the time that this turn appeared to you?

A. No; I can't say that I did at the time.

Q. Did you notice them any stronger up to the time of the collision?

A. Yes; before the collision.

Q. What happened then?

A. Well, there was a continuous rapid ringing of the bell.

(Testimony of Lloyd A. Harris.)

Q. That is, the peals speeded up and it was a steady ringing?

A. It rang continuously; yes, sir.

Q. With reference to the collision about how long before the collision did those continuous peals start? [177] A. Possibly two lengths.

Q. Possibly two lengths?

A. Maybe a length and a half and maybe two lengths.

Q. Did you hear any whistle there or other signal from the "Sakito Maru" after she came in sight?

A. Yes; just about the time of the impact.

Q. And then what did you hear?

A. There was either one or two blasts once, I remember, I am not sure.

Q. One or two, you can't be sure?

A. There may have been more and they may have been continuous.

Q. How close to the "Olympic" was the "Sakito Maru" at that time?

A. Just about the distance in the court room, I would say, possibly this way, maybe closer.

Q. As you were watching the "Sakito Maru"?

A. We were—

Q. Pardon me. Have you something to add?

A. Well, we were off to the side a little bit and I couldn't get a view of it exact.

Q. As the "Sakito Maru" approached the "Olympic", as you describe it, did you at any time see any man on this forecastle head, and that is this

(Testimony of Lloyd A. Harris.)

high part of the bow here which goes up to an extreme point right at the very bow? Did you see any man standing up there with, say, from above [178] his waist above the top of this bulwark?

A. Before it hit?

Q. Yes. A. No, sir.

Q. You are quite positive that you didn't see anybody on the forecastle head or anywhere on the forward deck? A. No; I did not.

Q. After the impact did you see anybody anywhere?

A. After the impact I saw—I can remember of seeing one man.

Q. What was he doing?

A. He was running. I believe he was along in this position, just about in here.

Q. Indicating about the—

A. I think he came into view right just about in here at the top.

Q. That is, indicating the after end of the forecastle head. In which direction did he seem to be going, toward the bow or down again? Indicating that he was approaching toward the bow?

A. Yes, sir.

Q. Did you see him go up the stairs or ladder, whatever it is that goes up there to the location?

A. I believe he was right up here at the time that I saw him.

Q. You saw him just about at the break of the forecastle [179] head? Your answer was what? Just about here?

(Testimony of Lloyd A. Harris.)

A. Yes; he was there, just coming up, or was coming up there. That drew my attention, the movement.

Q. Were you able to see they way the "Olympic" reacted to the crash? A. In other words—

Q. That is, did you see what the "Olympic" did when they hit? A. Yes. It seemed to tip.

Q. Tip which way? A. To the right.

Q. To her right? A. That is right. [180]

Q. Did the "Olympic" move any?

A. It swung or pushed forward, one way or the other. It pushed on.

Q. In what direction?

A. To the north, ahead of the—

Q. In the direction of the "Point Loma"?

A. Yes; that is right.

Q. About how far would you say?

A. Well, pushed it far enough that we were able to see astern, or possibly just a little bit past the stern.

Q. After the collision could you see the starboard side from where you were?

A. That would be the left side?

Q. The "Olympic's" starboard side or right-hand side?

A. I couldn't see the right-hand side after the crash, after it had stopped pushing or just before it went down.

Q. After the "Olympic" came to rest following

(Testimony of Lloyd A. Harris.)

the collision did you see the boats separate, the two ships separate? A. Yes.

Q. Could you see the "Sakito's" screws on her stern, as to whether they were turning?

A. I didn't look towards the back. I just kept watching the front to see what was going on.

Q. How did the vessels separate? Did they come [181] apart and the distance between them keep increasing?

A. It seemed as though it had backed up, or I suppose it had backed away, and as soon as it began to part there was a foot or two of clearance and the "Olympic" went straight down. The other boat—

Q. Can you tell us how far the "Sakito" had moved from the "Olympic" before the "Olympic" went down?

A. Well, a very slight distance. Possibly just a very few feet. Two or three feet, maybe, of light between them, if there was that much.

Q. Possibly two or three feet. Did you hear any noise, or was there any disturbance of the "Sakito's" structure as she pulled away from her?

A. Well, there was a crunching sound.

Q. There was a crunching sound as she pulled out?

A. But whether there were any disturbances, I didn't notice that particularly.

Q. You didn't see any disturbance?

A. No; not that I recollect.

(Testimony of Lloyd A. Harris.)

Q. As the "Sakito" approached the "Olympic" could you see if she was throwing a bow wave or, as they say, had a bone in her teeth, white water boiling up around the bow as she moved?

A. No; I didn't notice that.

Q. Have you done much fishing around the San Pedro Bay area? [182]

A. Well, off and on, as sport fishing.

Q. For about how long?

A. Oh, about several times a year on the "Olympic"—I don't mean the "Olympic". I mean the "Rainbow".

Q. On the "Rainbow".

A. Yes; just mostly the "Rainbow".

Q. About how many years have you been doing that?

A. Five or six years possibly.

Q. Every year you have gone how many times have you fished around in the Horseshoe Kelp area?

A. Oh, possibly 8 or 10 times in a year.

Q. And that would be true for every year for 5 or 6 years? A. I believe so.

Q. When you fished in this vicinity tell the court what you have seen of other vessels fishing around in that neighborhood.

Mr. Adams: If the court please—

The Court: The same objection. It will be understood this is subject to the same objection made to the same line of testimony of other witnesses. You may answer the question.

(Testimony of Lloyd A. Harris.)

A. Well, there are just about—I wouldn't know to describe it—a few live bait boats, as a usual thing. I think there are some regular live bait boats that fished those waters there.

Q. By Mr. Cluff: How about sports fishermen? [183]

A. Lots of sports fishermen, especially Sundays and holidays.

Q. Yes. On each occasion you have seen a great many boats out there in that area where the barges are anchored?

A. I usually went on a week day. I seldom picked a Sunday or holiday.

Q. You have been out several times on Sundays as well as week days?

A. Yes. I usually got one or two, but most of the times I would pick a week day so the crowds were not so big.

Mr. Cluff: That is all.

The Court: Gentlemen, I think we will take our recess until 9:30 o'clock tomorrow morning, gentlemen.

(Discussion by court and counsel as to probable duration of trial and procedure as to depositions omitted from transcript.)

(Whereupon an adjournment was taken until Wednesday, September 17, 1941, at 9:30 o'clock a. m.) [184]

Los Angeles, California, Wednesday,
September 17, 1941, 9:30 a. m.

(Appearances have been heretofore noted.)

LLOYD A. HARRIS

recalled.

The Court: Proceed, gentlemen.

Mr. Adams: If the Court please, I have one or two preliminary matters to raise. I intended to do this yesterday. As the Court knows, there are two libels filed here against the "Sakito Maru", covering the same radio equipment. I understand that counsel have gotten together on it and are going to proceed only on one libel, and in that case, I move the dismissal of the other libel. I understand they are going to proceed on the libel filed by International Broadcasting Company. The other libel is filed by George Berger. I think the Court will recognize the inequity of our having to keep posted bonds on two suits which represent—

The Court: Are counsel here?

Mr. Fall: Yes, your Honor. Mr. Briney represents Mr. Berger. Mr. Briney is away this week. I told Mr. Adams that we had come to an arrangement whereby one of these libels will be dismissed. Mr. Briney will not be back until the latter part of the week, and as soon as his return we will dismiss one of them. So that, if the matter of a week

(Testimony of Lloyd A. Harris.)

will not make a great difference, I hope that counsel will withdraw his motion until that time and we will enter into a stipulation with [185] reference to it.

The Court: Does the matter of a few days make any difference?

Mr. Adams: Well, I suppose not. You expect Mr. Briney back before the session closes at the end of this week on Friday?

Mr. Fall: I think he should be back by then. If he is not, I know he will be back before next Monday.

Mr. Adams: With the understanding that one of the libels will be dismissed by next Monday—

Mr. Fall: Yes.

Mr. Adams: And the bond may be exonerated at that time?

The Court: Yes; when the dismissal is made one bond will be exonerated and there will be some money for counsel.

Mr. Adams: Thank you. There is one other thing, if the Court please. I do not wish to inquire, out of order, into the Court's business and I am wondering when we might expect a ruling on the motions to dismiss the actions of rem on the death claims that were filed in rem.

The Court: I have not had an opportunity to go into them as yet.

Mr. Adams: I see.

The Court: And this week I have not had an opportunity.

(Testimony of Lloyd A. Harris.)

Mr. Adams: Yes; I realize that.

The Court: And I really wanted to hear the evidence before I did rule on them, so there would not be any likelihood [186] of doing anybody injustice.

Mr. Adams: I wanted to call the Court's attention to the fact that we filed reply memorandums on Monday.

The Court: Yes; but I have not had an opportunity to go into the matter. I might state, what would be the objection in the proceedings immediately following this, as long as counsel all are represented, to proceed to hear the evidence on the death claims?

Mr. Adams: Well, one notable objection, it seems to me, is that until the Court has decided the issue of liability, none of us will know exactly who is interested in resisting such evidence. And I am frank to say that I had contemplated, from what the Court had previously announced, that—

The Court: In other words, you would not be ready?

Mr. Adams: Would not be ready; yes.

The Court: I have read 250 pages of the depositions since we adjourned last evening, and before we get through with this we are going to have one of these charts—I think 5101, in evidence, with the markings on it, with the course of the "Sakito Maru", and the location of the boats, and also the location of the wreck?

(Testimony of Lloyd A. Harris.)

Mr. Adams: I intend, if the Court please, to introduce in evidence the working chart of the "Sakito", with the exact markings on it.

The Court: The deposition shows the course of the "Sakito Maru". I have examined some of the maps, but they are just [187] maps; but I felt that somebody that is capable to do so, and counsel should get together on it and chart the course of the "Sakito Maru", and the location on the map as to where the collision took place. "Olympic's" Exhibit No. 6, I believe it is, sets forth the location of the three barges. In other words, as I understand the testimony, going into your case, the defense, the course of the "Sakito Maru" has been definitely located by the Coast Guard, and the divers who have gone down, and part of the wreck has been dynamited, so the exact spot should be designated on the map, so the Court can look it over with some detailed understanding.

Mr. Adams: I appreciate exactly what the Court has in mind. It is further our intention, as soon as we get to our proof, to introduce this map, and then ask that the markings that have been made on similar maps, supplied by other witnesses, indicating the location of the wreck, and also the "Olympic" prior to the wreck, be transposed on this one chart, and in that way the Court will have before it on one chart the various locations given of the vessels and the course and so forth.

The Court: Another thing the Court is inter-

(Testimony of Lloyd A. Harris.)

ested in, and that is, it is your contention that it is in the ordinary, you might say, stream of travel—

Mr. Adams: That is correct.

The Court: And the Court is interested in the area there in which the vessels do pass in entering and leaving the harbor, [188] going south, and coming from the south, and whether or not it is an area that is more or less confined, and whether it is a wide area that they have to enter. The map, of course, would indicate that this happened in the open sea, with plenty of space all the way around, and yet the testimony of the Coast Guard indicates a more or less definite stream of travel; I presume you would call it a stream, instead of a channel. It is the usual course a vessel takes, according to this testimony, of 340 degrees—

Mr. Adams: Approaching Los Angeles harbor, 160 degrees, and leaving Los Angeles harbor. We will demonstrate that a vessel leaving Los Angeles harbor on a regular course of 160 degrees true will come within that area, and we will demonstrate that it will pass close to the location of the barges, the proximity of the passing depending to some extent on the point of departure, which might be any point in the opening to the outer harbor, inasmuch as there is a breakwater on the shore side, and an extension of that breakwater, and it would be depending on where the vessel happened to go through that opening and set a course of 160 degrees true. The proximity in passing the barges would depend

(Testimony of Lloyd A. Harris.)

upon that, and also upon the currents, and other factors which influence the ability of a vessel to maintain an exact true course, which, of course, never happens. I will stipulate with counsel that 5101, the "Sakito" working chart, which they were using at the time, may be put in evidence right now; also the evidence of the [189] Coast Guards.

The Court: I am making this inquiry as the case is unfolding. I am interested also in the evidence as to the exact length of time that the barges have been anchored out there.

Mr. Cluff: We will have evidence to that effect.

Mr. Adams: I might state that there is a chart, I believe, that is in evidence indicating that, introduced in connection with the deposition of Lieutenant Hewins. That is my recollection. Is this attached to the Monahan deposition?

The Court: I haven't seen the Monahan deposition.

Mr. Adams: I might state, if the Court please, that there are two charts which might be referred to; that is the more detailed chart showing the area of the Los Angeles harbor—

The Court: Does this red line represent the course of a vessel approaching from the south?

Mr. Adams: No. If the Court please, as explained by Lieutenant Hewins, the red line represents the course of vessels—

The Court: I examined one of these, and tried to figure it out.

(Testimony of Lloyd A. Harris.)

Mr. Adams: May we introduce, if Mr. Cluff is willing to stipulate, the working chart of the "Sakito Maru" so that the Court may have it?

Mr. Cluff: If you care to, I will lay down the course of 340 true on this chart here.

Mr. Adams: I might say that we would like permission to [190] withdraw this chart, because the captain is arriving late this afternoon, and I would like, of course, to talk to him, referring to the chart during the conversation.

The Court: You need not introduce it then.

(Discussion off the record.)

Mr. Cluff: I have just one or two questions to add to my direct examination.

Direct Examination

resumed.

By Mr. Cluff:

Q. Mr. Harris, after you came to anchor, about the time you heard the "Sakito Maru's" first whistle, could you see the "Rainbow" barge?

A. It could be very dimly made out, being as that I knew it was there; and I really—

Q. And could you see it?

A. Yes; it could be dimly made out.

Q. After the collision and after the sinking of the "Olympic", you and Mr. Jones, in the "Pat" and the gentlemen, the men on the "Marell", circulated around there, looking for survivors for quite a while? A. That is right.

(Testimony of Lloyd A. Harris.)

Q. And were there other boats in the vicinity, other small craft like the "Pat", fishing boats?

A. Yes; I think the two boats that were alongside, and a little later another boat come on the scene, oh, quite a large fishing boat; but I think they cruised by very slowly, but I [191] think it stopped a few minutes—I am not sure—before the Coast Guard.

Q. Do you remember the Coast Guard cutter launch "Hermes" coming out there?

A. That is right.

Q. And she launched a life boat and they joined in the search? A. Yes; that is right.

Q. Do you remember the officer in charge of the life guard boat pulling up to the "Pat" and having a conversation with you and Mr. Jones?

A. No.

Q. Did you have any talk with the officer in the life guard boat?

A. I don't remember whether I did or not. I answered a few questions for him, I believe, but just what they were I don't remember.

Q. Was that while you were cruising around there in the water? A. Yes.

Q. Did that officer ask you or ask Mr. Jones, in your presence, to state what you knew about the thing, and did either of you state that you were about half a mile southeast of the "Olympic" and couldn't see her? A. Not that I remember.

Q. But that you could hear her bells and that

(Testimony of Lloyd A. Harris.)

you saw the [192] "Sakito" pass you shortly before the collision?

A. No; I don't remember making that—

Q. No such conversation took place in your presence?

A. No such conversation like that at all.

Mr. Cluff: That is all.

Cross-Examination

By Mr. Adams:

Q. Mr. Harris, you were a guest, I take it, on the "Pat"? A. Yes, sir; that is right.

Q. The "Pat" is owned by Mr. Jones?

A. Yes, sir.

Q. Have you had any experience at sea?

A. No, sir.

Q. Going aboard any vessel?

A. No; just the few times that I had went fishing. I had went fishing a good many times in the few years I had been out here; but otherwise, no sea experience.

Q. Have you ever made any study of navigation or anything of that nature?

A. No; I haven't.

Q. Referring to this diagram, which is "Olympic" Number 4, and particularly to the sketch that you drew of the "Pat".

A. I am sorry, I didn't draw that sketch. Mr. Jones did.

Q. Oh, I am sorry. Did you state that this sketch, drawn by Mr. Jones, of the "Pat" and

(Testimony of Lloyd A. Harris.)

that diagram substantially [193] indicated the direction in which the "Pat" was lying?

A. I believe it was more to this side.

The Court: He testified that there was a different angle there.

Mr. Adams: I see.

A. I was fishing from the left side of it, and by standing on the left side, I could look directly over and see the "Olympic"; so therefore, I think that this must have been in a position more like this. It could have swung—swung back and forth. You see, it is a very small boat and it is subject to quite considerable swing back and forth.

Q. Do you recall whether—

A. But I believe in the general direction it was heading more this way, if that is the bow of it here—I am not sure. I believe it is.

Q. Yes; the bow is indicated by the line which is supposed to indicate the line running to the anchor. A. I see.

Q. The direction which you say you believe it was is the direction similar to that shown for the "Marell" which is designated by "M" on this diagram?

A. Yes. Yes; I do believe that it is.

Q. Do you recall whether the bow of the "Pat" was headed in the direction of the "Marell" or headed in the opposite direction?

A. It was headed away from this, I am quite sure. [194]

(Testimony of Lloyd A. Harris.)

Q. I see.

A. Because when I watched the crash, then as soon as it hit, I knew the thing to do was to get over there and give assistance if possible. So I went up forward to pull up the anchor and I glanced back over my shoulder to see what the boys up there were doing. Therefore, I must have been facing away from the "Pat" this way.

Q. Was the "Pat" riding at anchor then in about the same direction as the "Marell", shown on this diagram?

A. Yes. I would say more so than it is here, to the best of my knowledge.

Q. Was the "Pat" in line with the "Marell", or was it further away from the "Olympic", that is, further to the stern of the "Olympic"?

A. No. It was off in this direction and very nearly this direction from the "Marell".

Q. I wonder if you would just superimpose on that drawing the "Pat", showing her heading in the direction in which—

The Court: Just make an arrow there with a line.

Q. By Mr. Adams: All right; just make a line with an arrow.

The Court: The way you saw it.

A. Well, I believe it was lying more in this—possibly in this direction.

Mr. Adams: I see. Will you put an arrow to that.

(Testimony of Lloyd A. Harris.)

Mr. Cluff: Just put your initial "H" in front of that [195] arrow so we can identify it.

A. To the best of my knowledge, I was fishing from the left side.

Q. By Mr. Adams: That would be the side nearest the "Olympic"?

A. That would put me on this side, yes; with the rear of the little boat to my left. I was standing, looking over this way. I knew I had stood up fishing, and only fished a little while, and I noticed the people arriving in the shore boat.

Q. What do you estimate the distance to be between the stern of the "Olympic" and your vessel, the "Pat"?

A. Well, that has been more or less of a guess-work, and later on, since I thought more about it, I estimate it to be around the length of the "Olympic" or possibly a little greater; just about the length of the "Olympic" boat.

Q. The length of the "Olympic" boat is—

Mr. Cluff: 258 feet.

Q. By Mr. Adams: The length of the "Olympic" is 258 feet. Does that sound to you—

A. If I remember right, there was a buoy right along in here. I am not sure just exactly where it was, but it was right off here.

Q. Did you know where the buoy marking the stern anchor of the "Olympic" was?

A. I had been out a time or two before and we used to fish out there, and I believe it was some-

(Testimony of Lloyd A. Harris.)

where right along in [196] this locality. I am not certain about it.

Q. Could you mark that with a dot?

A. Well, I am so uncertain as to just the location, I would hate to.

Q. The place you are indicating now is somewhere between the "Marell" and the "Pat", is that correct?

A. Yes. It seems as though it would be in there. Whether it was or whether it wasn't, I don't know. It is so indefinite in my mind that I couldn't put a mark on there for you with any justice to you or myself or the Court.

Q. I see. Do you recall the exact time that you arrived there and got your anchor out?

A. I don't know that. You mean when I arrived at that location there?

Q. Yes, yes.

A. No. I don't remember of paying any attention.

Q. Do you have any approximate idea?

A. Somewhere, I would say, around seven o'clock or a little before seven, just at a rough guess.

Q. Did you notice any shore boats arrive at the "Olympic" and discharge passengers?

A. Yes; I think there was—I know that there was one had discharged passengers shortly before and—

Q. How do you know that? Do you mean shortly before you came to anchor?

(Testimony of Lloyd A. Harris.)

A. No; shortly after we come to anchor. [197]

Q. I see.

A. And whether or not there was the second one, it is now too dim in my mind to remember. But I do remember the one, and quite a few people getting off.

Q. Let me ask you this: When you arrived and anchored, and before this shore boat came to the "Olympic" that you remember seeing, did you notice any people aboard the "Olympic" fishing or getting ready to fish?

A. I believe there was some people on the boat fishing.

Q. Before this boat came that you remember?

A. Yes.

Q. I see. A. Yes; I believe there was.

Q. Did you see any boat come after that boat came that you distinctly remember?

A. I am not so sure whether or not it was a passenger boat. I believe there was another boat pulled up, but whether it was their tender pulling up or a bait boat or just what, I don't know. But I do know there was another boat. There was two boats there I can remember of, and I believe one pulled out and stopped about in a position on something like that, while the other one, I believe the other one got out of the road for the other one to come up. What they did I don't know. But I am sure—I know that the one passenger boat brought passengers, because I could hear them talking and would notice them getting on and off. [198]

(Testimony of Lloyd A. Harris.)

Q. Do you think that there were any more than four people that disembarked from that boat that you saw? A. Yes; I believe there was.

Q. Do you think there was as many as eighteen people?

Q. By the Court: Well, do you know how many people were on board the boat?

Mr. Adams: What I was trying to get, if the Court please, is some indication as to whether the witness was thinking of the first boat or the second boat. The first boat had eighteen people and that second boat had four people.

A. It was more than four, I am quite sure it was. I am not too positive, but it seems to me there were several people. There were two or three rather light colored suits or people without coats, in shirts. I don't know just which it was.

Mr. Cluff: May I suggest a question, Mr. Adams, that I think will clear that up?

Mr. Adams: I beg pardon?

Mr. Cluff: I say, may I suggest a question which I think will clear that up?

Mr. Adams: Yes.

Q. By Mr. Cluff: Did you see the first boat go away again before the collision?

A. There was one boat pulled away, I think, to make room for the other one. I don't think it left.

Q. Was that before the collision and before the "Sakito [199] Maru"?

(Testimony of Lloyd A. Harris.)

A. Yes; to the best of my recollection.

Q. That you saw one boat pull away?

A. Yes; I am sure.

Mr. Cluff: I will offer to stipulate that the "Grant" arrived about 6:45, discharged a number of passengers—I don't know whether it was 18 or 14, quite a few; the "Lillian L" got there, according to his time, at 7:05 and had four passengers. She was alongside at the time of the collision.

Q. By Mr. Adams: Do you believe, Mr. Harris, that you had been at anchor there as long as five minutes before the collision?

A. Yes; I think we had. I am quite certain we had been there more than five minutes.

Mr. Cluff: Of course, that is according to the "Lillian L's" time, Mr. Adams. That is not the "Sakito's" time.

Q. By Mr. Adams: Can you tell us approximately how long you had been there prior to the collision? What is your best recollection on that as to the length of time you had been there before the collision happened?

A. Well, possibly, variations one way or the other, fifteen minutes.

Q. I see.

A. Would be about as near as I can tell. It could have been twenty minutes, but I doubt it.

Q. After you came to anchor did you get your fishing [200] tackle ready to start fishing?

A. That is right; we did. [201]

(Testimony of Lloyd A. Harris.)

Q. And did that occupy some time?

A. It did.

Q. As I understand your testimony, you heard a sound which you did not at that time definitely identify as a whistle of a vessel?

A. That is right. As near as—we wasn't paying very much attention to it, but it merely called our attention that it might have been a whistle.

Q. Do you know how much time had elapsed since you came to anchor there when you heard this sound? Can you give us any estimate on that?

A. Well, I couldn't say for sure, but it seemed like soon after.

Q. That is the best you can tell us?

A. Yes. I went up forward and put the anchor down for Mr. Jones and I believe it was after that. I believe that—and I had come back—I believe that it was that we heard, which we didn't know whether it was a horn or warning signal or just what-not.

Q. How long was it after that, if you can tell us, that you heard a sound which you definitely identified as a whistle? Do you have any idea?

A. Well, I was trying to estimate the time that I put my reel on the pole, threaded the line through, made it fast to the leader, baited the hook and started fishing. Well, it could have been three or four minutes; it could [202] have been. It is indefinite in my mind how long it could have been.

(Testimony of Lloyd A. Harris.)

Q. You are not able to give us a very accurate estimate? A. No; I couldn't.

Q. Did you hear the sound which you did not recognize of a vessel before you started fishing?

A. I think about the time that I was making up my fishing tackle.

Q. I see.

A. As near as I can remember. It has been so long ago it is—

Q. How much time, if you can give us this figure, elapsed after you heard the sound which you recognized as a whistle before you actually saw any object which later turned out to be the "Sakito Maru"?

A. Well, it was quite soon afterwards, I think, as well as I remember.

Q. Can you give us any sort of an estimate, or are you not certain of it?

The Court: Counsel, this witness' testimony as to times, so far as this court is concerned, his estimates are of little value because he is honest with you and he tells you that he can't figure the time, and as near as he can tell you it is soon; and I don't think you should try to pin him down to the time when he is not able to give it and [203] can't. It would not be worth much to the court in view of his testimony.

Mr. Adams: If the court please, I agree with the court, but I am endeavoring to do just the opposite. I don't think the witness is certain on it

(Testimony of Lloyd A. Harris.)

and I just wanted to demonstrate on cross examination that he doesn't—

The Court: Well, you have demonstrated to my satisfaction.

The Witness: There is nothing in the world that I would rather do than to give the exact times.

Mr. Adams: I realize that, Mr. Harris.

The Witness: And if I had had a camera, I wish I could have taken some pictures.

Mr. Adams: I realize that, Mr. Harris. I am not quarreling with you on that.

The Witness: I understand.

Q. When you first saw the "Sakito Maru" what impression did you receive? Can you give us a description of the object that you saw when you first saw anything?

A. Well, as I looked out, how I looked out would be to my left, there were more or less of a moving object which, when I stopped and focused my eyes on, I was able to make out that it was a ship.

Q. What color was that object that you first noticed? A. It was a dark object.

Q. Did it seem to be black? [204]

A. Yes; which, in a very few seconds, resolved itself into a ship as my eyes—

Q. As you continued to watch it more of it became visible?

A. Well, it was pretty much visible. As soon as I made out that it was a moving object it was pretty much visible.

(Testimony of Lloyd A. Harris.)

Q. You know what the term "superstructure of a ship" means, don't you, the housing on the deck?

A. Yes; that is right.

Q. When you first saw this object were you able to distinguish clearly the superstructure of the "Sakito Maru"?

A. I wouldn't say clearly at all; just, I believe, that it come into sight approximately the same as the rest of the ship did.

Q. Did you notice the masts of the vessel?

A. What took my attention was the markings.

Q. The flag or emblem?

A. The emblem, or whatever it may be.

Q. Do you have any recollection of having seen clear to the top the masts at that time?

A. Right immediately I don't remember having sighted the height of it. I did very shortly after.

Q. As it came closer to the "Olympic"?

A. Yes.

Q. You were able to distinguish the masts? [205]

A. I didn't think it was—I thought surely they would see it and veer off, and I didn't pay as much attention to it as I wish now that I had of.

Q. By the Court: In other words, when you first saw the boat you did not sense any danger?

A. No; I didn't, your Honor, because I thought surely, the distance they had, that they surely would see, because, after all, the "Olympic" presented itself as a broadside, which necessarily would give them a better view of it than if she was narrow.

(Testimony of Lloyd A. Harris.)

Q. When you saw the "Sakito Maru" it was coming directly towards you; you saw the bow of the ship?

A. Well, no; not exactly directly. It was more indirect, at less an angle.

Q. It was more of a side view?

A. That is right.

Q. I wonder if you could indicate on this diagram, Mr. Harris, where the "Sakito" was when you first saw it, and indicate by a line and arrow the heading of the "Sakito", as she appeared to you at that time?

Mr. Cluff: Is counsel referring to "Olympic" Exhibit No. 4?

Mr. Adams: Yes. Do you think you can do that?

A. No. You see you have got me out of my element. If I got in a smoky room I might be able to get around, but not in the fog. [206]

Q. I realize that.

A. I wish I could accurately enough, so to speak, inform you.

Q. Would you be able to state whether or not the "Sakito Maru" seemed to be approaching the "Olympic" at right angles?

A. Do you mean directly?

Q. Yes, to her port side.

A. I don't believe it was. Right at first, of course, it could have been, I guess, more or less of an optical illusion, I believe, in the fog.

Q. Do you also think the perspective you had

(Testimony of Lloyd A. Harris.)

might have had some influence upon what you thought was the heading of the "Sakito"?

A. It is not impossible. I believe that it presented more of a front view a little later than it did just at the time when I first saw it, but I couldn't definitely state.

Q. After the impact, did you continue to watch the two vessels? A. As nearly as I could.

Q. And did you see any movement on the part of the "Olympic" after the "Sakito" struck the "Olympic"?

A. Yes, it was pushed quite a distance.

Q. You estimated that distance at what?

A. I don't know whether I estimated the distance, or [207] not, that the boat pushed it, but in our range of vision it swung it far enough—I think it pushed the stern of it—it was far enough that we could see the side that was damaged.

The Court: You could see the side that was damaged?

A. That is right, your Honor.

Q. By Mr. Adams: Could you see the starboard side? Were you far enough back so that you could see both sides?

A. No. The starboard side would be right?

Q. Yes.

A. No, we were unable to see it. What makes me certain I was unable to see it, the boat that was alongside of it, it was beyond our view.

Q. Will you please describe, when the "Sakito"

(Testimony of Lloyd A. Harris.)

separated from the "Olympic", with reference to the time that the "Olympic" ceased to move through the water, that is, came to a stop, or do you have any definite recollection of that feature?

A. I believe that they came to a stop about the time that I started to pull up anchor; about that time. I had to go up forward in the boat to pull up the anchor, and I believe by that time the forward movement had stopped.

Q. When, with reference to the time the forward movement of the "Olympic" stopped, did the "Sakito" seem to separate from it?

A. That is what I tried to figure out. I think by [208] the time I had the anchor about half way up, something like that, I believe they had started to separate.

Q. I believe you testified on direct examination that from where you were, that is, close to the surface of the water, the "Olympic" seemed to drop from the bow of the "Sakito"?

A. As it pulled away it seemed to slide down off, like it was sliding down off of a plane, and then broke away.

Q. Did the "Olympic" then continue to settle slowly in that downward movement?

A. It gained momentum as it backed—as the "Sakito" backed away, it seemed it released it, and it started slowly, seemed to slide off right on down; the nearer the water, the faster it went.

Q. Do you know what the rake of a ship is, the rake of the bow?

(Testimony of Lloyd A. Harris.)

A. I take it it is the angle the bow is built on, whether it projects forward or backward.

Q. Did you happen to notice the bow of the "Sakito", and determine whether she appeared to have a rake or not?

A. Yes. I estimated it cut half way through the "Olympic", on account of the position it pushed it, and it was so hit that it looked like it was standing about half way through. It could have been the rake that made it look more so. [209]

Q. What object of the "Sakito" seemed to penetrate farthest into the "Olympic"? Let me put it this way: What object of the "Sakito" extended farthest away for the port side of the "Olympic", the side that was struck?

A. The top of it.

Q. How far did that seem to extend over the "Olympic"?

A. It looked to me like about at least half way.

Q. At least half way?

A. That is just a rough estimate.

The Court: Gentlemen, won't the evidence show how those markings appear on the "Sakito Maru"? Won't they show definitely how far she penetrated into the boat, and won't the markings show the physical facts?

Mr. Adams: Of course, that will be of some value. I suppose counsel will make some argument based upon that. It is to some extent speculative, because no one knows exactly what it was that caused these holes to be punctured in the "Sakito".

(Testimony of Lloyd A. Harris.)

The Court: Not only the holes; I notice in these exhibits it shows markings, back in the bow; for instance, undoubtedly when the bow of the "Sakito Maru" penetrated the "Olympic" it left markings and you ought to be definitely able to ascertain that. I think that this evidence is of vital importance to the court, that it, the extent that the boat was penetrated. I think it solves the question that you have raised here about these bulkheads. [210]

Mr. Adams: That is correct.

The Court: If the boat was not seriously damaged, the location of the bulkhead, it seems to me, would be far more important than, say, if the boat was cut half way in two, the bulkhead would not have been of any particular avail, if they had been there.

Mr. Adams: We intend to demonstrate that very clearly and fully.

The Court: Another thing, this witness, from the distance, and the shape of the boat, it would be pretty hard for him to say how far that penetrated in there, and it seems to me, so far as I recall, the physical markings on the "Sakito Maru" would definitely establish that. In other words, there could not help but be markings penetrating this iron ship, and leaving scars.

Mr. Cluff: We will offer evidence of measurements made by Mr. Archibald, that it was something over 20 feet; about the line where the collision occurred.

(Testimony of Lloyd A. Harris.)

Mr. Adams: We have evidence on that. I was endeavoring to get a different point.

The Court: You may proceed.

Q. By Mr. Adams: I believe perhaps, Mr. Harris, you have answered the point I had in mind, in part at least: As the "Sakito" appeared to separate from the "Olympic", I take it that the "Olympic" just gradually settled?

A. It seemed to slide, as it began to gain momentum, [211] and backed from the hole, it seemed to slide right down; in other words, it looked like it was a hand opening, and it released it. The further it came back, the faster it went.

Q. Did that seem to take place almost immediately when the "Olympic" came to rest in the water, after being pushed through the water?

A. No, there was an interval where it held, like it was just hanging up there.

Q. While it held handing up there, was the "Olympic" tilted?

A. A little bit, I believe. I wouldn't say whether it had still tilted. It seemed like it might have been.

Q. It seemed like she might have been listing?

A. It could have been, a little, but I don't know.

Q. Do you know how long it held in that position before the "Olympic" started settling and the stem of the "Sakito" seemed to be separating?

A. About the length of time it took me to pull up the anchor.

(Testimony of Lloyd A. Harris.)

Q. Have you got any idea how long that was?

A. No.

Q. Were you pulling up the anchor in a hurry?

A. I wasn't wasting any time.

Q. How much chain did you have out?

A. I suppose around 130 or 140 feet; something like that. [212]

Q. What was the weight of your anchor?

A. That I don't know. I am not familiar with Mr. Jones' anchor. He possibly could tell you.

Mr. Adams: No further questions.

Mr. Cluff: I have no further questions.

The Court: That is all, call your next witness. [213]

ELWOOD JOHNSON

called as a witness on behalf of the libelant, being first duly sworn, testified as follows:

The Clerk: State your name.

A. Elwood Johnson.

Direct Examination

By Mr. Cluff:

Q. What is your business, Mr. Johnson?

A. I am in the service station business.

Q. You were a passenger on the "Olympic" the day of the collision with the "Sakito Maru"?

A. That is right.

Q. And you are a claimant and libelant in this

(Testimony of Elwood Johnson.)

case on account of the death of your son, as a result of that collision? A. Yes.

Q. Will you state, on the morning of September 4, 1940, how you went out to the "Olympic", and at what time?

A. We went out on a shore boat. We left the dock at 6:00 o'clock, I think.

Q. With reference to the collision, what time did you arrive at the "Olympic", as nearly as you can fix it?

A. Well, we stopped to get bait, and went on out.

Q. How long before the collision did you arrive aboard the "Olympic", as close as you can estimate?

A. I can tell you what I did from the time I got there [214] to the time of the collision.

Q. A matter of 15 or 20 minutes?

A. Yes, easy.

Q. Who was with you, Mr. Johnson, when you went out fishing?

A. Mr. McGrath, and his boy Jimmie, and Curtis and I.

Q. Your boy was how old? A. 18.

Q. Jimmie, McGrath's boy, was around 6?

A. I guess he was. I don't know how old he was.

Q. When you went out to the "Olympic" on the shore boat, as you approached the vessel, what kind of weather was it with regard to fog?

A. As we went out, left the breakwater, it was quite foggy.

(Testimony of Elwood Johnson.)

A. It was quite foggy past the breakwater?

A. Yes, past the lighthouse.

Q. As you went out, and approached the "Olympic", was there any change?

A. Yes, as we got out, away, we could see a barge, which we thought might be the "Olympic" barge, we were going to, but evidently it wasn't; it was the other one.

Q. The "Point Loma"?

A. The "Point Loma".

Q. How far was that barge away according to your judgment, when you first saw the barge. [215]

A. We went on up toward the "Point Loma", it seemed like, and I noticed he was not going to it, and it was not our barge, and we looked over, and we could see the other barge from the "Point Loma".

Q. On beyond the "Point Loma"?

A. Yes.

Q. When you first saw the "Point Loma", can you give us any idea about how far away it was; that is, when you first made out the "Point Loma" through the fog?

A. I wouldn't know exactly how far it was.

Q. Did the fog seem to be lighter than when you passed the breakwater, or heavier?

A. Oh, much lighter.

Q. As you boarded the "Olympic", did you see the third barge, which was called the "Rainbow" barge?

(Testimony of Elwood Johnson.)

A. That was lying astern of the other.

Q. Toward Long Beach?

A. I don't know.

Q. Did you happen to look for it? A. No.

Q. Did you see the "Point Loma", when you got aboard the "Olympic" barge?

A. I did not look.

Q. After you got aboard the "Olympic" barge, tell the court what you saw.

A. We crossed onto the other side of the barge.

[216]

Q. You crossed to the other side from the gangway?

A. Yes, went down to the other end.

Q. Don't say you went down to the end, but state whether it was the bow end or the stern end.

A. Did we get on the stern end?

Q. The gangway is on the quarter toward the stern, yes.

A. If we got on the stern, then we went up to the bow end to fish.

Q. Let us see if we can fix it this way: When you were standing on the side, while you were fishing and looking toward the sea, when the collision happened were you to the right of the point where the "Sakito Maru" struck, or to the left?

A. To the right.

Q. Then you were toward the bow? A. Yes.

Q. Go ahead.

A. We got up to the bow—that's right, is it?—

(Testimony of Elwood Johnson.)

and we proceeded to get our fishing tackle ready.

Q. Just a minute, Mr. Johnson; maybe this will be a little helpful: I am showing you "Olympic" Exhibit No. 1, and I will ask you if you recognize that as the "Olympic" barge, on the side where you were fishing.

A. I wouldn't say as I would.

Q. You couldn't identify the ship?

A. No. [217]

Q. Assuming that this was the vessel on which you were fishing.

A. Assuming it was, we were right here.

Q. Just about at the foremast—the first mast?

A. Yes, right up here; I think on this railing, or pole, we put our lunch and poles here.

Q. Right down at the bottom?

A. Yes, I believe we were right here, like these four people are.

Q. Just between the break of the forecastle head and the foremast? A. Yes.

Q. You started fishing. Who were there with you fishing?

A. Curtis to my right, and Paul McGrath was next, and Jimmie next, down below him.

Q. Jimmie was the little fellow, the little boy?

A. Yes.

Q. By the way, had you known the McGraths before making this trip?

A. Yes, several years before.

Q. You were friends, and went out together?

(Testimony of Elwood Johnson.)

A. Yes.

Q. You took this position, and then did you start fishing?

A. We got our fishing tackle ready, and then had to go [218] to the bait tank, and get bait.

Q. That was toward the other end of the ship, the after end?

A. Yes. Then we got our bait, and then walked back again.

Q. Will you tell the court what sort of tackle you were using, how big a reel, and what length of line on it?

A. I had a 300-yard reel, with 200 yards of 9-strand line, with 70 yards of nylon on the end of that, with a 4-foot leader on the end of that.

Q. Go on and tell just what happened; just what you saw; what you saw from the time you prepared your pole, or whatever you did, and the collision.

A. I went back and got the bait and baited the hook, and cast out. The tide was running that way, and I kept pulling on my line, and I let my line go on out, and I got the line almost all of the way out. As I had 70 feet of nylon, I probably had 200 yards of line out, and I had a strike out there. I did not catch the fish, but I felt as if I had lost my bait, so I brought it back in again. I put the reel down, and I went and got another bait, and I came back and cast out again, and started to reel my line out. Then is when I saw the boat come through the fog.

Q. Before we get into that, do you have any

(Testimony of Elwood Johnson.)

recollection of hearing the bell ringing on the "Olympic" barge, as you approached her, or as you came on board, and were preparing [219] your fishing tackle?

A. While we were on the boat I remember that we heard bells, yes, but what bells they were I did not pay any attention to.

Q. You didn't pay any particular attention to the bells? A. No.

Q. You couldn't give me any description of how they were rung, or how often, or anything else?

A. No, I wouldn't know.

Q. You have told us about letting out your line the second time, after rebaiting it. A. Yes.

Q. Did you see anything during the course of letting out your line?

A. After I cast out, yes, I saw this boat coming through the fog.

Q. You saw the boat coming through the fog?

A. Yes.

Q. When you first saw that boat about how much line did you have out, according to your best recollection?

A. I had just cast it out. The line just started out. After you cast, you kind of look up, and about that time I think I saw the boat, and the line was already in the water.

Q. I am showing you this little diagram, "Olympic" Exhibit No. 6. This shape is supposed to represent the [220] "Olympic" barge. You have in-

(Testimony of Elwood Johnson.)

dicated that your position was relatively about where you have made a little dot on her port side forward. I wonder if you would take my pencil, and indicate the direction from where you were standing where that boat first appeared to you?

A. Well, I would think the boat was right over in here, somewhere.

Q. You have marked with a cross, and I will write the name "Johnson" after that, so it appeared to you on a point to the left, and to the seaward of the "Olympic" from the position of her forward deck, where you were standing? A. Yes.

Q. Did the ship appear clear to you, or was it hazy?

A. When I first saw it it was just like some of the other boys mentioned; it was a black mass coming through like a curtain.

Q. Can you give us an idea of how far away it seemed to be?

A. Yes. Since I spoke and thought of it a lot, I am sure it was over a half a mile, probably three-quarters of a mile away.

Q. Later you got to see the shape very plainly, I take it? A. Yes.

Q. That ship was some 500 feet long?

A. Yes. [221]

Q. Do you have any idea how many of her own lengths away she was when you first saw her?

A. I couldn't decide that way.

Q. It is pretty hard to do. When you first saw it, did you have any apprehension of a collision?

(Testimony of Elwood Johnson.)

A. Oh, not at all.

Q. What did you do then, from the moment you first saw her?

A. I kept on reeling my line out.

Q. You kept on until you had let out how much line?

A. I think I almost had as much out as I had the other time.

Q. Approximately 200 yards? A. Yes. [222]

Q. Approximately all of it out? A. Yes.

Q. Did you continue to watch that vessel?

A. Yes, I told Curtis, "Here comes a big boat," and he said, "I saw it." He had already seen it coming in.

Q. He and McGrath were also fishing at the same time?

A. Yes. Red had just gotten the pole for Jimmy to fish.

Q. As you continued to observe this approaching ship—by the way, did you hear any whistles from her at that time? A. Not when I saw it.

Q. Did you hear any whistle before you saw it, down from that direction, or any direction?

A. Yes, it seemed to me when I was either getting my bait ready, or when I had the first line out, I heard a whistle over there. I remember distinctly hearing one whistle.

Q. Somewhere toward the south?

A. Somewhere there, I heard a whistle, yes.

Q. What did the ship seem to do after you first saw it as a black mass?

(Testimony of Elwood Johnson.)

A. When I first saw it I couldn't decide whether it was going to the right of us or to the left of us; I wouldn't know.

Q. You couldn't make out where her heading was? A. No. [223]

Q. Did it clear up shortly, so that you could see what her heading was?

A. Yes, it came right on out.

Q. How did it appear she was headed, could you tell?

A. It was not long after I saw it that I definitely made up my mind that it was going to pass to the right of us.

Q. As you were facing out seaward? A. Yes.

Q. Did you continue fishing?

A. I continued fishing.

Q. Go on and tell in your own way what happened.

A. It came on up here like this.

Q. You are moving with your hands. That does not make a record. If she changed her course, or anything, just say whether she changed to the right or to the left.

A. From the first time I saw it—

Mr. Adams: Just a minute. I object to the question as leading and suggestive.

The Court: I don't think that is leading. He is trying to make a line with his hand, and he is telling him to describe it, so that he can put in the record the direction he is indicating, with his hand moving to indicate the change.

(Testimony of Elwood Johnson.)

Mr. Adams: I am sorry.

Mr. Cluff: We might get at it this way, Mr. Johnson. Say whether she turned further away from the "Olympic", or [224] in toward the "Olympic." A. It turned toward us.

Q. When she turned toward you, how far away did she seem?

A. Well, it was still a long ways away.

Q. At that time did you have any apprehension that she was going to run into you?

A. No, not then.

Q. Was the turn made quickly, or did it take a little time?

A. No, it came out over there, and kind of angled.

Q. A sharp angle or a small angle?

A. No, just a sort of a long angle, over toward us.

Q. At that time did you make any change in what you were doing?

A. Not until after it got through the kind of an angle, and started coming over toward us more.

Q. By that time did it seem to be heading toward the barge itself?

A. No, I did not think so. I thought it was going to cross my line.

Q. You thought it was going to cross your line?

A. Yes.

Q. Which was out some 200 yards? A. Yes.

Q. Then what did you do? [225]

A. I started to bring it in.

(Testimony of Elwood Johnson.)

Q. Go on from there.

A. I started bringing in my line; as it came closer and closer I kept bringing it in and bringing it in, until it got—a lot of things went through my head at that time. I realized that the ship hadn't seen us, and I realized that it was going to come awfully close, but I still thought it would go past us. I knew it was going to be close. I kept winding until it got up quite a ways.

The Court: You say quite a ways. How far?

A. Several ship lengths out.

The Court: Could you see the ship clearly and distinctly?

A. Yes. The fog was very high, and the sun was shining through, and it was sort of gray; it was going to be a beautiful day.

The Court: You say you could see the ship distinctly several ship lengths away?

A. Oh, yes, and it started to make another turn in, I thought, toward us, and instead of going on past, it looked like it was coming closer toward us, and was going to pass us quite close. As it came closer I kept winding faster and faster, and then it got so close I thought it was going to sideswipe us. It didn't seem that they reversed the motors, or made any signs, and I was sure they didn't see us. As it got in front of us I said to the boys, "It is going to hit us," and we wound up our reels fast, and got our lines [226] in, and I said, "Grab hold of the rail," and we ran about 12 feet, and grabbed hold of the rail, and the boat crashed.

(Testimony of Elwood Johnson.)

Q. Could you form any estimate as to how fast that ship seemed to be coming as she approached, from the time you first saw it until she turned into the "Olympic"?

Mr. Adams: I object to the question upon the ground that no proper foundation has been laid; that it calls for the conclusion of the witness. I don't think this witness has been qualified by virtue of his experience at sea to judge the speed of vessels.

Mr. Cluff: I haven't heard, if the court please, that it takes any special qualification to estimate speed. It may be a matter of weight.

The Court: I don't know as to what particular value the estimate of the witness would be, unless he can show some qualification. I am going to admit the evidence for what it is worth.

Q. By Mr. Cluff: Mr. Johnson, could you see whether the approaching ship was throwing any bow water, or white water around her bow?

Mr. Adams: I object to that as leading and suggestive.

The Court: Overruled.

A. Naturally, when it made the turn sort of into the barge, I was quite interested in whether it was slowing up, or what it was going to do. It would seem naturally that it was really coming in, and it seemed to me that I could [227] hear the waves more than I remember seeing them, swishing through the water.

Q. You could hear the swish of the water?

(Testimony of Elwood Johnson.)

A. It seemed to me that it came—I had been up there by that Horseshoe Kelp many times, and I saw many boats going by, and I would say it was going as fast as the Catalina boats go by.

Mr. Adams: I move that the answer be stricken as non-responsive, and I move also that it be stricken upon the ground that there is no basis for comparison of the speed of the Catalina steamers.

Mr. Cluff: I will stipulate as to their speed, which you know as well as I do.

Mr. Adams: I know that once they went too fast, and were held at fault for doing it, but I don't think they are going that fast any more, so I don't know what their speed is. I move the answer be stricken.

Mr. Cluff: I think it is a fair comparison.

The Court: It doesn't mean anything to the court. We are not going to have testimony here as to how fast the Catalina boats travel. The motion to strike will be granted.

Q. By Mr. Cluff: I will put it this way, Mr. Johnson: Did the "Sakito Maru" seem to slow down—did its speed get less at any time from the time you first saw her until she approached you?

A. No. [228]

Q. So far as you could tell, it looked like the same rate of speed constantly? A. Yes.

Q. As she approached you, I suppose she then became sharp and clear in your vision?

A. Oh, yes.

Q. Could you see the point of the bow where the

(Testimony of Elwood Johnson.)

two sides of the ship came together? I am showing you "Olympic" Exhibit No. 5, and I will ask you if you recognize that as a picture of the "Sakito Maru". A. Yes, I do.

Q. I direct your attention to the point right up in the extreme bow, on the upper deck, where we see here a little up and down figure. Was that point clearly in your vision as she approached you there?

A. Yes, it would be.

Q. Did you see any man, or man's body, or torso, on that forward deck anywhere?

A. No, I did not see anyone on the boat at any time.

Q. At any time? A. No.

Q. For just a moment turning to the "Olympic" again, did you at any time, before the collision, become conscious of the "Olympic's" bell ringing?

A. Yes.

Q. When, and under what circumstances, will you tell the [229] court?

A. I think before it made that last turn into us, I think it started ringing real loud, and as it came closer, it seemed to be getting harder and harder and faster.

Mr. Cluff: May I have the answer?

(Answer read by the reporter.)

Q. That bell then was ringing continuously?

A. Oh, yes.

Q. Without stopping at all? A. Yes.

(Testimony of Elwood Johnson.)

Q. That was about the time just before she made her last turn?

A. Yes, probably about that time I thought it might sideswipe us.

Q. Can you describe to the court how the impact seemed to you—felt to you?

A. I was quite surprised; I told the boys we had better grab the rail; I did not know what might happen. But I didn't feel a thing. I could hear a big crash, like maybe a truck running over an orange crate, naturally, as it went in, but so far as the movement of the barge, I did not feel anything.

Q. You did not feel any shove? A. No.

Q. After the collision what did you do next?

A. I picked up the fish boxes, and another pole there [230] that Red had left, and looked around, and there was no one there.

Q. McGrath and your boy had gone elsewhere?

A. Yes, they had gone. So I walked around the nose of the Japanese boat, to get back where we got on.

Q. Just a minute. Before you left the left-hand side of the deck to walk around to where you got out, did you see anybody on the upper deck of the Japanese boat then?

A. No. I did not look. I did not see anybody, no.

Q. From your position did the movement of the Japanese boat into the side of the "Olympic"—had that stopped by the time you started to gather up the poles and start around?

(Testimony of Elwood Johnson.)

A. It stopped before I gathered them up.

Q. How far did it seem to you that the bow of the "Sakito Maru" had gone into the "Olympic's" side?

A. I couldn't tell there, but I know when I walked around out on the nose of it, there wasn't more than 15 or 20 feet between the ship and the nose of the ship.

Q. That is, the other side? A. Yes.

Q. Was that right down at the point where the bow of the "Sakito" was in the "Olympic's" deck?

A. I walked about halfway between. I did not pay much attention.

Q. That isn't high up, but right down at the deck, at [231] the point where you observed it?

A. I didn't look up on the boat at all, after it hit.

Q. So, so far as the upper part, you can't tell how far that was? A. No.

Q. But the point where you did see it, with regard to the midship part of the "Olympic", was it halfway through, or was it less than halfway through or more than halfway through?

A. How wide is the "Olympic"?

Q. You can tell where the midship part is, in line with the masts?

Mr. Adams: I object to that as calling for the conclusion of the witness, and assuming something not in evidence.

The Court: He said there was more than 15 or 20 feet left. You can figure it out; use your own mathematics.

(Testimony of Elwood Johnson.)

Q. By Mr. Cluff: After you passed around onto the starboard side, that is, the side where the gangway was, tell us what happened.

A. I saw all the bunch down at that end, but Curtis came with the bait to me.

Q. Curtis, your boy?

A. Yes, and we stood just about right there, where the Japanese boat was. We might have been a little bit past it, and I said to him "You have got lifebelts on." He says, "Yes, we all have", and he says, "You ought to get one." [232] There was a rowboat broke in two, like that, right in front of me, and underneath the back seat was a lifebelt, and I put that on, and he says "Dad, we have seen about everything, haven't we?" That was an old saying we used to have; and I says "Yes." He says "Is that your black coat lying there?" I could see a black coat; it was not mine—it was floating kind of in the water. About that time the "H-10" taxi came up, and the man there said, "Get on; get on", and I turned and jumped on. I still had the fishing box and the rods—poles—and I put them up in the cabin.

Q. You say you jumped on. Did you jump on the roof of the cabin?

A. No, I jumped on the front end, and put them up in the cabin, where the man sits and guides it, the wheel house; I jumped in front of him, and then I turned around, and one of the men was pulling on this girl. I got down on my knees to help

(Testimony of Elwood Johnson.)

him, and her lifebelt was caught. I was sort of standing on my head, so to speak, raising this, and I heard a swish in the water, and I looked up, and I don't know how many feet, but it couldn't have been more than about 15 feet, there was where the whole group was standing, and they kind of threw up their hands, and the water washed them right underneath; then it was quiet.

Q. That was when the barge went down?

A. That was when the barge went down.

The Court: You had no realization that it was going down [233] so quickly? A. No.

The Court: You did not have any sensation of it?

A. No idea. I don't think anybody did.

Q. Mr. Cluff: Did you see the Japanese vessel—did you look at the "Sakito Maru" from the time you got aboard the taxi?

A. No, I didn't see it.

Q. Did you see it separate from the "Olympic"?

A. No.

Q. Before you got on the taxi, while you were walking around to the other side, did the "Olympic" seem to be settling in the water?

A. I couldn't say; I couldn't tell.

Q. Do you remember, when you crossed the deck, if the "Olympic's" masts—poles as you call them—seemed to be tilted, or were they straight up?

A. I wouldn't know.

Q. Was the deck slanted as you went across? Did you have to kind of hold back, or could you walk normally across?

(Testimony of Elwood Johnson.)

A. It seemed to me I just walked normally.

Q. When did you first discover that the boy was not with you?

A. After the barge went down I still talked to him; I thought he was sitting right behind me; and he did not answer. That's when I stood up, and thought maybe he went around in [234] back of the boat. I found that he was not there at all.

Q. You are referring now to the taxi?

A. Yes. I realized—

Mr. Cluff: I think, your Honor, that counsel had better examine on that part, so I won't go any further with that.

Q. So you can't give us any help about the separation of the two vessels? Did you notice the "Sakito" after the separation?

A. Well, a long time after.

Q. After the "Olympic" went down?

A. After it went out and anchored.

Q. Not for a long time? A. No.

Q. At the time you saw her she was at anchor?

A. Yes.

Mr. Cluff: Mr. Adams, I think in justice to Mr. Velpmen that I had better turn the examination over to him before proceeding to cross, because this gentleman is a libelant in the case.

Mr. Velpmen: As I understand it, my going into what he saw about his boy at this time is to be reserved until a later time, when we get to the point of damages, and I see no reason of interro-

(Testimony of Elwood Johnson.)

gation now on that. It has nothing to do with liability.

The Court: That is my understanding.

Mr. Velpmen: As long as I will be privileged to go ahead [235] at a later time.

The Court: I think we might take a 7-minute recess at this time.

Mr. Cluff: Your witness, Mr. Adams.

(Short recess.)

Cross-Examination

Mr. Adams: Mr. Johnson, I have just a few questions.

Q. I believe you testified that after you got aboard the "Olympic" and got your tackle rigged up, you cast your line out and then let the line on the reel out, and you made some comment about the tide running at that time. Did you notice which way the tide ran?

A. I believe that the way I was standing was kind of off this way, if I remember right.

Q. Now let's see. Would it be to your right or to your left as you stood at the rail?

A. A little bit to the right, I believe.

Q. It was running, then, in a direction from your left to your right?

A. Well, you wouldn't say it was straight out, but it wasn't going clear right. It angled a little to the right, if I remember right, when my line went out.

Q. Was the tide away from the "Olympic" or

(Testimony of Elwood Johnson.)
towards the "Olympie", but still to your right? Do you see what I mean by that? [236]

A. My line was going out.

Q. I see. Are you familiar with the directions as you stood there? A. No; I am not.

Q. What experience have you had, if any, at sea?

A. None, I suppose. I have been fishing on live bait boats and barges for about five or six years.

Q. You have never been employed aboard any vessel? A. No.

Q. Have you had much chance to observe large vessels such as the "Sakito Maru" maneuver?

A. What do you call maneuver? I have seen them come in and go out.

Q. Have you any idea as to the time that it takes to bring such a vessel to a stop when it is proceeding ahead? A. No.

Q. Do you have any idea of the distance that a vessel such as the "Sakito Maru" would travel in the direction in which she was proceeding even though her wheel was thrown over to, let us say, hard astarboard? Do you know anything about such matters as that?

A. No; nothing at all.

Q. Before you sighted the "Sakito" did you hear a whistle? A. Yes.

Q. That was when you were over getting bait, as I recall [237] it?

A. No. That was about the time I was fishing with my first bait.

(Testimony of Edward Johnson.)

Q. With your first boat?

A. Approximately in that time; yes.

Q. Do you recall having heard any whistle after that time? A. No.

Q. Do you recall the direction from which the sound of that whistle apparently came when you heard it?

A. Yes. It seemed like it was coming from the same direction where the boat finally appeared.

Q. I see. Do you have any idea about how much time elapsed after you heard that whistle before you sighted the "Sakim"? A. No.

The Court: Is the court greatly interested in ideas of people? You have both been using that expression "ideas of time". Unless the witness is in a position to give us some accurate estimate, the court is not greatly interested in their ideas. I say that at this time because both counsel have used that expression.

Mr. Adams: Well, I am perfectly willing to let it stand at that. There has been, of course, certain testimony elicited upon direct examination, and upon cross-examination I conceive it to be my purpose— [238]

The Court: I understand, but this witness has not given any estimates of time at any time along the line of any estimate.

Mr. Adams: I take it the testimony—

The Court: As I view his testimony, he was there on the boat, he did certain things and there was a

(Testimony of Elwood Johnson.)

collision, and he saw the boat coming and to him it looked like it was going to miss it, and finally, it was apparent to him it was going to hit it and it did hit it.

Mr. Adams: I will guide myself—

The Court: What I mean, I am not trying to stop you at this time on questions. I have been listening quite a little bit to both counsel asking witnesses their ideas. Now, I am not greatly interested in what their ideas may be. I am interested in what they know. I am not saying that particularly to this question, but to try to stop that type of question from now on.

Mr. Adams: I am certainly willing to be guided by the court's comment as to what he conceives the testimony to be.

The Court: You can understand it does not mean anything to the court. This man was there, fishing; he was not paying any attention even. These people's estimates of time are not a great deal of help, particularly anybody who was sitting there, a passenger on that boat, fishing. If he had a strike there, why, a lot of time could pass and he would not realize it; and it does not mean a great deal [239] to the court.

Q. By Mr. Adams: Mr. Johnson, calling your attention to your testimony about when you first saw the "Sakito", do I understand your testimony to be that the impression that you have is of seeing, first, a black object?

(Testimony of Elwood Johnson.)

A. Yes; I believe I saw it about as soon as anybody, about as soon as anybody could see it when it first came through the fog.

Q. Was the whole outline of the ship visible to you then? A. No.

Q. It, of course, gradually became more visible?

A. Yes.

Q. And when you first saw it could you see the white superstructure, or did that not become visible until the "Sakito" had come closer?

A. When I first saw it you couldn't see the white superstructure.

Q. Did the fog to you seem to be hanging above the surface of the water at a rather high height?

A. No. It just was a high fog. It looked about that time of day it was just a high fog.

Q. The fog was not right down to the surface of the water?

A. Not where we were at.

Q. Have you any idea as to how high above the surface [240] of the water that the strata of the fog commenced? A. No.

Q. I believe you stated that when the "Sakito" seemed to veer towards the "Olympic" that you then became conscious of the "Olympic's" bell being rung continuously and harder, is that correct?

A. The last turn on the—yes; that is when I noticed the bell ringing harder.

Q. That is when you first noticed the bell. Did it also seem to be rung harder at that time?

(Testimony of Elwood Johnson.)

A. Well, I would say much faster.

Q. Was it louder?

A. No; I don't think it was a great deal louder. I couldn't tell. It was much faster you could tell.

Q. You did hear the bell after you came aboard the "Olympic", although you did not pay a great deal of attention to it, I take it?

A. Yes; I heard bells.

Q. Did the sound of the bell when it was rung faster appear to be any louder than the other occasions that you had heard it prior to that?

A. Well, you would think it would be, but it didn't sound to me like it was much louder. I didn't pay much attention to that.

Q. Did you consider that the sound made by the bell at all times was not a loud sound? [241]

Mr. Cluff: Just a moment. I think that calls for a conclusion which could not possibly be helpful, with no basis of comparison.

Mr. Adams: All of the other witnesses have testified as to whether the bell was rung more loudly than before. Certainly—

Mr. Cluff: You didn't ask him that. You asked him if he noticed a loud sound.

The Court: What does it mean to the court? To some people it seems to be loud. What might be loud would depend upon the capacity of the bell as to whether it was a loud bell. Whether the whistle or bell was blown or rung loudly or not would depend upon the capacity of the bell, wouldn't it? Isn't that a relative term?

(Testimony of Elwood Johnson.)

Mr. Adams: Of course, I think that a bell can be—

The Court: Well, go ahead, go ahead. Ask the question.

Q. By Mr. Adams: Would you describe the bells being rung on the occasions that you observed it as loudly, or lightly, or in between, or can you give us any description?

A. Well, it just sounded like all ship bells do when it is foggy. I have been out before when ship bells rang and it just sounded to me the same.

Mr. Adams: Nothing further. [242]

Mr. Cluff: A couple of questions I overlooked, Mr. Johnson.

Redirect Examination

Q. By Mr. Cluff: At the time of the collision or just before it, did you hear any whistle from the "Sakito Maru"? A. No.

Q. Any short whistles, two or three of them?

A. No. To me, those three blasts of whistles I heard was after the collision.

Q. Were after the collision?

A. It seemed it had hit and then they blew the whistles.

Q. You did hear three blasts? Some time right around the collision? A. Yes.

Q. And it seemed to you it was after they hit?

A. It seemed to me like they hit and then blew those whistles.

(Testimony of Elwood Johnson.)

Q. What sort of whistles were they, long or short, and how many?

A. Short, three. I think there was three short whistles. It no doubt was a signal of some kind. That is the way I figured it out.

Q. Had you been in the habit of going out on barges, fishing at Horseshoe Kelp?

A. I have been going out there in the kelp for years. [243]

Q. For years. On what barges?

A. Mostly live bait boats.

Q. Mostly live bait boats?

A. Yes. I have been on barges. I was on the old "Empress" years ago, and I was on another old barge out there. I don't know the name of it now.

Q. Was the "Empress" on the Horseshoe Kelp when you were out there?

A. Yes. They figured it was Horseshoe Kelp.

Q. How many years ago?

A. Oh, it has been a long time. The barge has not been there now for quite a while.

Mr. Adams: Will you let the witness finish the answer, please, Mr. Cluff?

Q. By the Court: What do you mean by "quite a long time"?

A. Well, three or four years I imagine.

Q. By Mr. Cluff: What other barges have you been out there on?

A. I don't know the name of it. There was an

(Testimony of Elwood Johnson.)

old barge out there with a street car for a lunch room. I know I have been on that one sometimes.

Q. A street car on the boat for a lunch room?

A. Yes.

Q. I can't identify that myself.

A. Well, I don't know the name of it.

Q. Had you ever been on the "Point Loma"? [244]

A. No.

Q. On the "Rainbow"? A. No.

Q. You have been out on live bait boats on many occasions? A. Lots of times.

Q. On week days or holidays or both?

A. Both.

Q. That goes back about how many years?

A. Oh, five or six years.

Q. Five or six years? A. Yes.

Q. You have been out every year? A. Yes.

Q. And several times every year?

A. Oh, lots of times.

Q. About how many?

A. Well, we go almost once a week, and every time we could get away or could afford to go.

Q. Would you tell the Court what you have observed there on Horseshoe Kelp in the vicinity of where the barges were anchored with respect to other fishing boats, bait boats or any other kind of boats and barges during the years you have been out there? A. Well, all the—

Mr. Adams: Just a minute, please. May it be understood that my objection— [245]

(Testimony of Elwood Johnson.)

The Court: The same objection and the same ruling heretofore made.

The Witness: Shall I go ahead?

The Court: Yes.

A. Well, all the—when the fish is running out there, naturally, all the live bait boats go out there. I have been out on one—I particularly remember one Sunday, a beautiful day, I was on Billy Rice's boat, sun shining bright, and no fish, but the group of us men were talking and one fellow made a statement he thought there was as high as 400 boats—

The Court: This is a statement from someone on the boat?

A. And I agreed with him that there was just literally several hundred boats. I have seen on a Sunday out there all types.

Q. By Mr. Cluff: How about week days?

A. Also boats on week days, too, when the fish was running.

Q. Have you been out there in foggy weather as well as clear?

A. Once before when I was there on the "Empress" it was a fog when they had to ring the bell, I remember.

Mr. Cluff: That is all, thank you, Mr. Johnson.

Q. By the Court: Where do you live?

A. I live at Rolling Hills at the present time.

Q. Where is that?

A. It is between Redondo and San Pedro. [246]

Mr. Adams: I have one or two questions, if the Court please.

(Testimony of Elwood Johnson.)

Recross Examination

Q. Do you recall a barge by the name of the "Wolfman"?

A. No; I never heard of it. I don't remember it.

Q. Mr. Johnson, on the occasions that you have been out on Horseshoe Kelp, either aboard live bait boats or other types of craft, have you observed merchant vessels passing close to the vicinity, either entering or leaving Los Angeles harbor?

A. Yes; we see boats go by.

Q. Have you seen them go by both sides of Horseshoe Kelp, that is, to the easterly of Horseshoe Kelp as well as to the westerly of Horseshoe Kelp?

A. Well, I am not so very familiar with how big that kelp is. You know, when I was on one barge I might have been in an entirely different location than on another barge. I wouldn't know.

Q. Well, with respect to any of the barges that you have been on there, have you seen vessels pass on both sides?

A. It seems to me, though, the vessels I saw was on the other side.

Q. By the Court: What do you mean by "the other side"?

A. Well, I have to go back to the Catalina boat again. As I see how they come through there, we always see that, and [247] it seems to me the boat would be over where the Catalina boat would be.

Q. By Mr. Adams: That would be the westerly side, wouldn't it?

(Testimony of Elwood Johnson.)

A. Now, you have got me on directions. I don't know on the directions.

Q. As you stood there on the deck of the "Olympic"?

A. You couldn't tell directions that day because you couldn't see far enough. I wouldn't know directions until I saw the shore, and then I wouldn't know where I was at, and I never could see the shore.

Q. If you assume, Mr. Johnson, that as you stood there on the deck of the "Olympic" on the port side you were facing in a general southerly direction, can you tell us whether the boats that you observed pass barges on prior occasions were to the westerly of your position at that time?

A. I am sorry, I am confused on the directions there and I wouldn't know. I just wouldn't be able to answer. I don't know directions here in town, even.

Q. Were you ever out there in a fog on barges?

A. Once before, on the "Empress", I was there when they had to ring the bell.

Q. That was several years ago? A. Yes.

Q. Within the last year or two have you been out on any of those barges during a fog? [248]

A. No. I very seldom fished on a barge.

Mr. Adams: No further questions.

Cross-Examination

Mr. Velpmen: May I ask a few questions?

Q. This fog that you say was out there about

(Testimony of Elwood Johnson.)

the time you saw the "Sakito Maru," Mr. Johnson, can you describe that as a blanket fog, a patch fog, or any other way?

A. I would say just a high fog you would call it. Anyone would call it a high fog, and it was quite thin where the sun was shining through. The sun was quite gray. You could see it was going to be a nice day.

Q. My question is: Was the fog solid or was it in spots?

A. In that vicinity right around the barge it wasn't even in spots, I don't think, not hardly that late. It seems like we came through the fog to get to it and the Japanese boat came through the fog also to come into the district that we were in.

Q. Are you able to compare the speed of the "Sakito Maru" with an automobile.

Mr. Adams: I object to that upon the ground it calls for the conclusion of the witness.

Mr. Velpmen: Well, thinking of an automobile in the—

The Court: You can't compare the two.

Mr. Velpmen: Very well; no further questions, then. [249]

Redirect Examination

Q. By Mr. Cluff: Mr. Johnson, as the "Sakito" became clear on her approach could you see the tops of her masts?

A. I don't remember seeing the masts. It just seems like I could see the top of the ship. To indi-

(Testimony of Elwood Johnson.)
cate the point beyond there, I don't remember.

Q. The top of the house? Was that because you didn't pay any particular attention or because the masts were obscured?

A. Well, I didn't pay any particular attention.

Q. Do you think a view of the "Sakito" was obscured by fog?

Mr. Adams: Objected to upon the ground it calls for the conclusion of the witness.

The Court: Objection sustained.

Mr. Adams: Especially in view of this witness' answer that he didn't notice.

Mr. Cluff: That is all.

The Court: That is all, Mr. Johnson.

Mr. Cluff: Miss Lillian Karsh. [250]

LILLIAN KARSH,

called as a witness on behalf of libelant, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. Lillian Karsh.

Direct Examination

By Mr. Cluff:

Q. Miss Karsh, you are the daughter of the Mr. Joseph Karsh who was concessionaire on the barge "Olympic"? A. Yes.

Q. At the time she was sunk. And you were on board at the time of the collision? A. Yes.

(Testimony of Lillian Karsh.)

Q. And had been some time, assisting your father in his business. How old are you?

A. Eighteen.

Q. Did you sleep on the barge the night of September 3rd and 4th? A. Yes; I did.

Q. And what time did you get up?

A. About six o'clock.

Q. Just tell us what you did after getting up?

A. I got dressed and went into the barge kitchen there.

Q. Into the barge kitchen. Now, I wonder if you would show the Court on this photograph here just where the kitchen [251] is. You recognize that as a picture of the "Olympic" do you? A. Yes.

Q. Will you take my pencil and point to the place where the kitchen is.

A. It would be in the back of that. This is the tackle stand, and it would be in back of the tackle stand.

Q. In back of the tackle stand.

Mr. Adams: I don't know whether the witness means forward or in back.

Q. By Mr. Cluff: Are you sure it is in this house or in the after house?

A. No; it is in this house.

Q. Yes. I thought you were a little confused.

A. This would be the kitchen on that side of the boat.

Q. This was on the side that was hit by the "Sakito Maru." Did you see her?

(Testimony of Lillian Karsh.)

A. Yes. This kitchen is right here and that is the cafe here.

Q. This is the cafe forward and then the kitchen is back of it. Do you remember there is a little alley-way running through? A. Yes.

Q. From side to side to side, right back of the kitchen? A. Yes.

Q. All right. You went into the kitchen to get your breakfast? [252] A. Yes.

Q. About seven o'clock?

Mr. Adams: May the record show that she has been referring to the housing which is just forward of the after mast?

Mr. Cluff: Yes; the after housing of the "Olympic".

Q. Did you notice what time it was? What time did you go into the kitchen?

A. It was about ten after six.

Q. How long did you stay in there?

A. Until the collision.

Q. Until the collision. Do you remember when the passengers arrived on the first shore boat?

A. Yes; I do.

Q. How long was that before the collision as you remember it?

A. I couldn't state for sure.

Q. While you were in the kitchen did you hear bells ringing on the "Olympic"?

A. Continually.

(Testimony of Lillian Karsh.)

Q. What sort of bell was it? How did the bell sound?

A. Well, he would ring it continually, and then ring two rings afterwards, and then stop for a few seconds and then start again.

Q. That was going on all the time you were in the kitchen? A. Yes.

Q. What was the first indication that you had that the [253] "Sakito Maru", the vessel that ran into you, was in the vicinity?

A. I looked out through the kitchen window once and I saw it, but it seemed to be passing us and was quite a distance away.

Q. Just a minute. Don't get too far. You looked through the kitchen window. Was there anything that caused you to look up, or did you just happen to look up?

A. I just happened to look out.

Q. What did you see, now? Tell us, first, just what you saw.

A. I just saw the outline of a ship.

Q. How far away was it?

A. I couldn't tell exactly.

Q. Do you know how far away in lengths of the "Olympic" barge?

Mr. Adams: Just a minute. Objected to as already asked and answered. The witness demonstrated she does not know.

The Court: Objection sustained.

Mr. Cluff: All right.

(Testimony of Lillian Karsh.)

Q. Anyhow, you saw it out the window. Now, how did it seem to be headed? How was it headed in the direction with reference to where you were?

A. Northwest.

Q. Do you know what the bow of a ship is?

A. Yes. [254]

Q. The front end. Was that front end pointed right toward the side of the "Olympic" or was it pointed in some other way?

A. No; to the west of the "Olympic".

Q. To the west of the "Olympic". Well, all right, the west of the "Olympic". You are sure of your directions out there? Do you know which way the "Olympic's" bow was pointing? A. West.

Q. West. And it was to the west of the "Olympic". What did you do when you saw that?

A. I just stayed in the kitchen.

Q. All right. What happened next?

A. Well, I was making breakfast and I didn't pay much attention to the "Sakito Maru".

Q. What is the next thing that you remember that happened that impressed itself on your mind?

A. I think someone called my attention to the "Sakito Maru" was getting awfully close.

Q. Did you hear any bells ringing, that is, did you hear any change in the bell on the "Olympic"?

A. Not yet.

Q. Not yet? A. No.

Q. It first was called to your attention that somebody said it was getting close? [255] A. Yes.

(Testimony of Lillian Karsh.)

Q. Do you know who that was?

A. I think it was Pinkie Styles.

Q. Pinkie Styles is the captain of the "Lillian L". Where was he when he said that?

A. In the passageway between the—between the cabins and the kitchen.

Q. That is the passageway right back of the kitchen there? A. Yes.

Q. And then after he said that, just tell us the next thing that happened about the "Sakito Maru" that you saw.

A. It seemed to be heading across our bow, and then as we were watching it, it made a turn and—

Q. A turn in which direction?

A. A turn to the—

Q. That is, away from the "Olympic" or toward the "Olympic"?

A. Toward the "Olympic".

Q. All right. Then what happened? Was there any change in the bell then?

A. The bell started ringing very fast.

Q. All the time? A. Yes.

Q. Then did you stay in the kitchen all this time?

A. Well, no. At that time Captain Styles called for all the passengers who had just got off of his boat to get back on. [256]

Q. Yes.

A. And I went out of the kitchen to get into his boat.

(Testimony of Lillian Karsh.)

Q. Did you go on the "Lillian L"?

A. No; I didn't.

Q. Your sister, was she in the kitchen with you at that time?

A. No; she was out on deck.

Q. She was out on deck. So, after you went out, which side did you go on? Which side of the "Olympic", on the side toward the barge or on the side toward the Japanese boat?

A. On the side toward the barge.

Q. You didn't go aboard the "Lillian L"?

A. I went down there to the gangplank to get on the "Lillian L" and just at that time the collision occurred and I was—the "Lillian L" was knocked away and I was knocked overboard and I got back onto the ship.

Q. You were down on the gangplank then when you felt the collision? A. Yes.

Q. Did that force knock you into the water?

A. Yes; it did.

Q. Then you say you got back on the ship?

A. Yes. I—

Q. Just tell us how you got back on?

A. Well, when it hit, it seemed to push the boat nearly over on its side. [257]

Q. That is, rocked it over like that, you mean, or pushed it sideways through the water?

A. Yes. So the gangway is down, you know, comes down lower; and I was on the bottom of the gangway there, and when it pushed, it pushed me into the water off the gangway.

(Testimony of Lillian Karsh.)

Q. Off the gangway. That gangway was a flat platform about three feet wide, or just about, at the water level where the boats land?

A. Yes.

Q. And that went down and dropped you off into the water?

A. Yes. When I reached out to catch back onto the boat, well, I caught on—I don't know how many steps there were—but it seems about the sixth step. I couldn't get back onto the gangplank, but I got on the steps that went down to it.

Q. You got back onto the "Olympic" barge yourself, then? A. Yes. [258]

Q. You got aboard the "H-10" taxi, I guess, then?

A. I didn't have a life preserver on when I got on the gangplank. Then—

Q. So what did you do then?

A. So then I got back on and we all got life preservers on.

Q. Did you see Jack Greenwood, the barge master, after you got back on the ship again?

A. Yes, sir; I did.

Q. On the boat. Where was he?

A. He was beside the kitchen, handing out life preservers.

Q. Did you get one with the rest? A. Yes.

Q. Did you see anyone that did not have life preservers?

A. To my knowledge, they all had life preservers.

(Testimony of Lillian Karsh.)

Q. Did you see Joe Culp, the bake boy?

A. Yes; I did.

Q. What was he doing?

A. He was helping to hand out life preservers.

Q. Did you see Mr. Ohiser, the watchman?

A. Yes.

Q. What was he doing?

A. Also helping with the life preservers.

Q. Yes. Tell us how you got aboard the "H-10" taxi?

A. And when the "Lillian L" went away the "Sakito Maru" [259] was still in the "Olympic" there, and there wasn't any water taxis beside us. After that we all got to the side of the barge there and we waited for the "H-10" taxi to come alongside.

Q. Was that when she came alongside? Now, do you know when the "H-10" came alongside, then, or did you see where Mr. Greenwood was?

A. He was still on the back toward the life preservers, I believe. I believe—I am not certain—but I think he was on top of the kitchen near the live bait.

Q. Up where the life preserver boxes were?

A. Yes.

Q. After that did you see Mr. Greenwood anywhere else around the ship before it went down? Did you see him down on the gangway with the passengers after that?

A. I don't understand.

(Testimony of Lillian Karsh.)

Q. I mean did Mr. Greenwood—did you see Mr. Greenwood come down from off the top of the kitchen and come down to around where the passengers were getting aboard the water taxis?

A. While we were waiting for the "H-10" taxi he walked over to the bow of the "Sakito".

Q. Oh, he did. And what happened there?

A. Well, he called up to them for a ladder.

Q. A ladder. And did you see anybody on the "Sakito" then? [260]

A. I didn't notice anybody but I—

Q. You just saw Mr. Greenwood call up for a ladder. Now, just go on and tell me in your own way what happened after that.

A. The "H-10" water taxi came alongside. All the passengers got into line. We thought that if—you know, we would have plenty of time, without jumping over to it, that we could get on one at a time; and we all stood in line waiting for him, and just as it came my turn to get on the barge went under.

Q. And did you go in the water?

A. Yes; I did.

Q. Do you know how many passengers got on ahead of you?

A. I wouldn't know, no.

Q. Do you know if anyone got on after you?

A. I know no one got on after me.

Q. While you first saw Mr. Greenwood calling up for a ladder could you tell how far into the side of the "Olympic" the bow of the "Sakito Maru"

(Testimony of Lillian Karsh.)

was?

A. It seemed about—about 10 feet.

Q. Was it about 10 feet into the side where it happened? A. Yes.

Q. It seemed to be about as far as the center of the “Olympic”?

A. It was further than in the center. [261]

Q. Further than in the center.

A. Because the bait tank was in the center and it was past the bait tank.

Q. It was past the bait tank. At any time before you left the barge did you see the “Sakito Maru’s” bows separate any from the “Olympic”, from the hole? Did it come out of the hole any at all? Do you understand what I mean?

A. I didn’t notice that.

Q. Well, you say you saw the bow of the—

Mr. Adams: The witness has answered she didn’t notice it.

Mr. Cluff: Oh, I thought she said she didn’t understand.

The Court: No; she said she didn’t notice.

Mr. Cluff: Oh, I beg your pardon.

Q. You didn’t notice it. So far as you could see, it was still tied in, the last you saw of it?

A. No; the last I saw of it it was leaving the hole.

Q. Oh. Well, now, the “Sakito” did start to separate, as best you saw. Was that before or after you got in the taxi? A. Before.

(Testimony of Lillian Karsh.)

Q. Before it started to separate?

A. Yes.

Q. Was that just as you got on the taxi or quite awhile before?

A. Well, it all happened—it was not quite awhile. [262] The whole thing happened—it seemed, as it pulled out, the barge went under and I was just getting onto the water taxi.

Q. Do you remember if, after you got back on from the first time you fell in the water, did the barge seem straight up and down, as she usually was, or tilted over towards the right-hand side?

A. It tilted over when I first went into the water, but when I got back on it seemed to right itself.

Q. It seemed to kind of right again?

A. Not completely, but partly.

Q. About the time of the collision, or a little before, or a little after did you hear the "Sakito Maru" blow any whistles?

A. At the collision, at the time of the collision it blew three short blasts.

Q. Three short blasts. Would you say that was before or right at the time it hit?

A. It seemed to me while it was still in the hole.

Q. While it was still in the hole it seemed to blow three blasts? A. Yes.

Mr. Cluff: No further questions. Do you have any questions, Mr. Montgomery?

Mr. Montgomery: Not right now. [263]

(Testimony of Lillian Karsh.)

Cross-Examination

Q. By Mr. Adams: Miss Karsh, as you were standing in the kitchen and as you saw the "Sakito Maru" out of the window, I believe you testified you looked at it and did not pay any further attention at that time, is that correct?

A. I didn't look at it constantly.

Q. How long did you look at it the first occasion that you looked out of the window and saw a vessel going by? A. I didn't time it.

Q. Well, did you remain at the window for any appreciable length of time, or did you just glance out of the window, note the vessel going by and then return to whatever you were doing?

A. Yes; I just noted it was there.

Q. And what were you doing at the time? Were you preparing food in the kitchen at the time?

A. Yes; I was.

Q. And after you glanced out of the window and noted the vessel did you return to your work of preparing food? A. Yes; I did.

Q. In other words, you did not continue to stand at the window and watch the "Sakito Maru" at that time? A. No.

Q. I believe you stated that the next thing that attracted your attention was Pinkie Styles making a statement that the vessel was getting close, is that correct? [264]

A. Yes.

Q. Do you know how long it was after he made

(Testimony of Lillian Karsh.)

that statement that the "Sakito" struck the "Olympic"?

A. No; I couldn't tell you exact minutes.

Q. I believe you testified that while you were waiting for the "H-10" water taxi to come alongside Mr. Greenwood went over near the bow of the "Sakito" and yelled up after a ladder, is that correct?

A. Yes.

Q. I assume that he spoke in English, did he not?

A. Yes.

Q. He did not speak in Japanese? A. No.

Mr. Adams: No further questions.

Mr. Eastham: May I ask a question?

Cross-Examination

Q. By Mr. Eastham: You testified just now that the bake boy was helping Mr. Greenwood pass out life preservers. Did you see him after that? Did you see Joe Culp after you saw him passing out life preservers to the passengers with Mr. Greenwood?

A. I don't remember whether I did or not.

Q. Do you remember if he was on board the "Olympic" when you got off?

A. Yes; he was. [265]

Q. Do you remember what portion of the barge he was on at that time when you saw him last?

A. I am not sure.

Q. You do remember that he was still on the barge at that time? A. Yes.

(Testimony of Lillian Karsh.)

Mr. Eastham: I thank you, that is all.

Mr. Adams: I have just one further question, if the court please.

Q. Did you board the "H-10" water taxi from the landing or from the deck of the "Olympic"?

A. There was a deck and then there was a higher portion—I don't know what it was called—and had a pulley on it and I was standing on that.

Q. Were the other passengers getting aboard the water taxi from the deck or the landing or what?

A. From this pulley thing, because the deck was already—the water was up to our waist almost.

Q. In other words, at the time you got aboard the water taxi the water was as high as your waist on the deck of the "Olympic", is that correct; that is, if you had remained standing on the deck it would have been up to your waist? A. I imagine so.

The Court: I don't quite understand that.

Mr. Adams: I am not so sure that I do, either. [266]

Q. Was this place where you were standing above the deck of the "Olympic"? A. Yes.

The Court: You mean at first, or when she was finally getting aboard?

Mr. Adams: When she finally got aboard the water taxi. How high—

The Court: I understood from her testimony that she tried to make the taxi and didn't, and landed in the ocean, and she climbed back up.

Mr. Adams: That is what I was going to get at. I did not quite understand that, either.

(Testimony of Lillian Karsh.)

Mr. Cluff: I think she said the first time when she tried to get aboard the "Lillian L" she was washed into the water by the impact, and then climbed back up in the barge and got into the water taxi. Is that right, Miss Karsh?

The Court: I think we might pursue that a little more in detail—I can see the point—relative to when they were standing in line, expecting to get onto this boat and then the boat sank from underneath. You might pursue that a little bit.

Mr. Adams: Yes.

Q. Miss Karsh, where were these people standing that were standing in line to get aboard the water taxi?

A. They were standing on the deck and around this [267] platform.

Q. Can you describe that platform any more than you have?

A. It was about as high as the rail was.

Q. About as high as the rail? A. Yes.

Q. How big an area did it cover on top?

A. About two feet square, is about all it was.

Q. Only one person could stand on that at a time? A. Yes.

Q. So they were standing in line on the deck of the "Olympic", intending to mount this platform to step onto the water taxi, is that right?

A. Yes.

Q. By the Court: And at that time the "Olympic" was almost submerged, was it? Was it already sinking? A. Yes; it was.

(Testimony of Lillian Karsh.)

Q. And at that time had the "Sakito Maru" pulled away?

A. It was just at that time that the "Sakito Maru" started to pull away.

Q. Was the boat at the time that the "Sakito Maru" pulled away, the "Olympic", the water was almost up to its deck?

A. It was—the deck was wet, but as it started to pull away it filled up, you know, dropped more, I guess.

Q. I know, but ordinarily when they take passengers on [268] and off the "Olympic" it is necessary to land them on a platform at the water's level, and they go up a stairway to the deck. But the "Olympic" had submerged sufficiently at the time that you could go from the deck to the taxi, is that true?

A. Yes; but it was—

Q. In fact, you had to get up on a platform to get onto the taxi, didn't you?

A. We didn't have to, but in order not to get as wet as we thought that we would if we didn't get on the platform.

Mr. Cluff: May I have that last answer, please?

Mr. Adams: Excuse me?

Mr. Cluff: May I have the answer to the court's last question?

(Answer read by the reporter.)

Q. By Mr. Adams: In other words, as all of the people stood in line, you included, waiting for

(Testimony of Lillian Karsh.)

the water taxi, the deck of the "Olympic" was under water? A. Yes.

Q. And at that time the bow of the "Sakito" was still wedged into the "Olympic"?

A. No. The "Sakito" was backing away.

Q. Well, I thought you testified a few moments ago that it was the motion of the "Sakito" or the action of the "Sakito" in backing away that caused the "Olympic" to submerge more just as you were about to get onto the water [269] taxi?

A. Well, the "Sakito", as it came in, went out almost immediately; and when it came in we were over on our side and righted, and then it was just as we righted it seemed to back away.

Q. Just as soon as the "Sakito" ploughed into the "Olympic" and got, as you testified, into about half of the "Olympic", a little bit beyond the bait tank, it immediately pulled right out again?

A. Yes.

Q. Where were you at the time it started to separate from the "Olympic"?

A. I was standing on the deck in line with the other passengers.

Q. But you had in the meantime fallen into the ocean and climbed back up on the landing again?

A. Yes.

Q. During that interval of time? A. Yes.

Q. By the Court: Were you taking your time or were you hurrying?

A. I think I was hurrying.

(Testimony of Lillian Karsh.)

Q. By Mr. Adams: As you were standing in line there, waiting for the water taxi and the other passengers, the "Sakito's" bow was still into the "Olympic", is that correct?

A. It was leaving. [270]

Q. Had it started to separate from the "Olympic" when you got back from the landing and got a life preserver and got in line, waiting for the water taxi?

A. It started to separate just after I got my life preserver on.

Q. And had the water taxi come alongside then?

A. I think so.

Q. People were already getting aboard at that time, were they not?

A. I am not sure.

Q. You were the last one that got aboard the water taxi? A. Yes.

Q. By the Court: How did you get aboard the water taxi?

A. Just as the "Olympic" went down my father was standing behind me and he pushed me toward the water taxi and someone must have caught my arm.

Q. By Mr. Adams: Were you standing on this platform that you spoke of as having a pulley at that time? A. Yes.

Q. And your father was on the deck below. Can you give us any idea of how much time elapsed between the time that you noticed the "Sakito" first

(Testimony of Lillian Karsh.)

separating from the "Olympic" and the time that you got on the water taxi?

A. To me it all seemed like in a minute. I don't know.

Q. Would you say it would be less than a minute? A. I think so. [271]

Q. A matter of seconds? A. Yes.

Mr. Adams: No further questioning.

Cross-Examination

Q. By Mr. Montgomery: When you first saw the "Sakito" how clearly could you see it?

A. It was just an outline of a ship.

Q. Could you see the name on it? A. No.

Q. How soon afterward did you see it clearly? Did the fog lift or not?

A. The fog was—oh, it just seemed like it lifted all at once, and, you know, it was drifting away.

Q. And then tell me what you saw.

A. I saw the side of the "Sakito" and the—

Q. How do you know it was the "Sakito"?

A. Well, I saw the flag on the side.

Q. What did that flag look like?

A. It was a red flag with a white background.

Q. What called your attention particularly to the "Sakito", if anything?

A. It just happened—

Mr. Adams: If the court please, this has already been asked and answered. I assumed that Mr. Cluff's interrogation was direct examination. [272]

(Testimony of Lillian Karsh.)

The Court: I am not going to let him cover the same ground, but I will give him a reasonable amount of leeway, Mr. Adams.

The Witness: Repeat the question.

(Question read by the reporter.)

A. I think it was because just the ship passing.

Q. By Mr. Montgomery: What did you notice about the bells that were ringing?

A. They were ringing in rotation.

Q. What bells were they?

A. The "Point Loma", the "Olympic" and the "Rainbow".

Q. When you were looking at the "Sakito" did you see anybody on the deck?

A. I didn't notice.

Q. Did you see anybody on the boat?

A. I didn't notice anybody on board.

Mr. Montgomery: That is all.

Mr. Lippert: May I ask a question?

Cross-Examination

Q. By Mr. Lippert: While you were standing in line, with the other passengers to get onto the water taxi was the stairway and platform that was ordinarily used submerged under the water?

A. It was not completely submerged.

Q. About *how* many stairs do you think were still above [273] water?

A. The last two.

(Testimony of Lillian Karsh.)

Q. How far above the side of the water taxi was the platform that you were standing on from which you jumped into the taxi?

A. I don't understand that question.

Q. As I understand it, you were standing on a platform that was slightly above the deck, and from that you went to the water taxi. In order to get to the water taxi did you have to jump down?

A. I don't know. The water was so rough, the water taxi would be above us, and then it would be below us; it kept bouncing around.

Q. Do you know how high the sides were of the water taxi? A. No, I don't.

Mr. Lippert: That is all.

The Court: Just a moment. Let us see if we can understand and reconcile your testimony. You testified that you were getting on the platform because of the water on the deck, and yet, in answer to questions, you said you could still see a couple of steps of the ladder leading down wasn't submerged. The ladder leading down leads from the deck down, doesn't it? A. Yes.

Q. If the deck started to be submerged, how could you see the ladder? [274]

A. Well, as it was over on its side, it was submerged, but as it righted you could see it, I think.

Q. Were the waves starting to come over the deck, the reason you wanted to get up on the platform—the water was starting to beat over the deck?

(Testimony of Lillian Karsh.)

A. The things were starting to roll around and hit my legs.

Q. What?

A. The bait and poles and things like that.

Q. So there was enough water on the deck to be floating things around the deck? A. Yes.

The Court: That is all.

Cross-Examination

Q. By Mr. Adams: Miss Karsh, as I understand it, you were helping your father in the concession aboard the "Olympic", is that correct?

A. Yes.

Q. How long had you been working aboard the "Olympic" that summer?

A. I wasn't exactly working. I just happened to be there when Miss Rubin was off on shore.

Q. You didn't work regularly with your father in the concession?

A. No; I just stayed there with him. [275]

Q. Did you stay there with him all the time?

A. No.

Q. Or just on occasions?

A. Just on occasions.

Q. Did your father open up his concession aboard the "Olympic" when the "Olympic" was first anchored out there in May? A. Yes.

Q. Did you start going out to the "Olympic" at that time? A. Yes, I did.

Q. Were you aboard the "Olympic" on the occasion when the coast guard came aboard? Do you recall that incident?

(Testimony of Lillian Karsh.)

Mr. Cluff: That is assuming a fact not in evidence.

Mr. Adams: It is in evidence, if the court please, in the deposition of Mr. Moynahan, in the file.

Mr. Cluff: It isn't offered yet.

Mr. Adams: We can't prove our case before we question this witness. It will be proved.

Mr. Cluff: I don't care. Go ahead.

Q. By Mr. Adams: Do you recall the incident of the coast guard coming aboard the ship?

A. No, I don't.

Q. You weren't aboard at the time?

A. No.

Q. Do you recall any discussion about that? [276]

The Court: We are not interested in discussions, if she doesn't know whether they came or not.

Mr. Adams: We are endeavoring to show whether Mr. Karsh had that brought to his attention.

The Court: That would be hearsay, what the discussion was there.

Mr. Adams: It it not a question of hearsay; it isn't necessarily an offer to prove what was said.

The Court: If you are going to start to go into these questions I am going to continue this on, and let all the testimony as to the claims come in. You are going into the question of liability.

Mr. Adams: I am going into the question of contributory negligence.

The Court: Then, gentlemen, I am going to let

(Testimony of Lillian Karsh.)

all counsel go into these matters. Go ahead; proceed.

Mr. Adams: I don't intend to do anything different than what the court wishes me to do, but I thought contributory negligence was on the issue of liability that would be determined by the court at this time.

The Court: Proceed.

Q. By Mr. Adams: Do you recall any discussion that took place aboard the barge in the presence of your father, Mr. Karsh, concerning the incident when the coast guard came aboard the "Olympic"?

Mr. Montgomery: I object to that as not proper cross [277] examination.

The Court: It is not proper cross examination.

Mr. Adams: I am examining the witness under 46 A of the United States Supreme Court rules, as an adverse witness.

The Court: This is not proper cross examination, is it?

Mr. Adams: I will assume her as my witness under that rule.

Mr. Cluff: Do those rules apply to an admiralty suit?

Mr. Adams: They are admiralty rules.

Mr. Cluff: Aren't they civil rules?

The Court: Gentlemen, I will settle the argument. I am going to hold that it is not proper cross examination, but I will direct this witness to remain

(Testimony of Lillian Karsh.)

in court, and you can recall her as your witness when you put in your case, on the same rule as applies to the Captain.

Mr. Adams: Do I understand by the court's latter remark, that I am not going to be permitted to cross examine Captain Anderson any further?

The Court: No; I say under the same rule, the same arrangement, as part of your case, to keep things running in a logical manner, that you can recall this young lady as your witness, as an adverse witness, and introduce this evidence; but it is not proper cross examination. You recognize that.

Mr. Adams: I didn't think, while she was on the stand, that it made any difference whether I examined her under [278] that rule or not.

The Court: The objection has been made. So long as counsel does not want to open it up at this time we will confine it to regular channels.

Q. By Mr. Adams: Miss Karsh, during the occasions that you have been out there aboard the "Olympic", had you, on occasions prior to this, observed vessels passing the "Olympic"?

A. Yes.

Q. Passing on both sides? A. Yes.

Q. And going in both directions?

A. Yes.

Q. That was not an infrequent occurrence, was it? A. No.

Mr. Adams: No further questions.

(Testimony of Lillian Karsh.)

Redirect Examination

Q. By Mr. Cluff: Just one more question: You remember the Judge asked you if the stairway went down from the deck, and you said it did. Isn't it a fact that the stairway goes down from the platform; that is, you go up to the platform, and then go down the stairway from the platform, down to the lower landing? A. Yes.

Q. That is, you climb to the rail, or go up to the top [279] rail of the platform, and then you go down the stairway? A. No.

Q. That isn't it?

A. No, it is, I think, one step up, and then down.

Q. That is, you go one step up from the deck to the platform, and then goes down a series of stairs to the lower platform, and then step on to the shore boat? That is the way it happens regularly, isn't it?

A. I think so.

Mr. Cluff: I think that will be all.

(Recess was here taken until 1:45 o'clock p. m. of this day.) [280]

Afternoon Session

2:00 o'clock

LEONARD SMITH,

a witness called on behalf of the libelant, being first duly sworn, testified as follows:

The Clerk: Will you state your name?

A. Leonard Smith.

(Testimony of Leonard Smith.)

Direct Examination

Q. By Mr. Cluff: Mr. Smith, on September 4, 1940, you were the operator in charge of the water taxi "H-10-17"? A. I was.

Q. You were out about 7 o'clock in the morning in the neighborhood of Horseshoe Kelp, alongside the barge "Point Loma"? A. I was.

The Court: Alongside what barge?

Mr. Cluff: The "Point Loma".

Q. I have a little drawing here, Mr. Smith, purporting to show the relative positions of the three barges, as they lay at their anchor on that morning. Does that coincide with your observation of the situation there? A. It does.

Q. That is, with the "Point Loma" almost directly [281] between the "Olympic" and the breakwater, and the "Olympic" to the seaward of her and the "Rainbow" barge, the "Samar", in a line astern with the "Point Loma"?

A. That's right.

Q. Will you indicate with your pencil where your vessel was just before the collision? You have indicated the position about the port bow of the "Point Loma". I will mark that "H-10-17". Were you anchored or adrift? A. Adrift.

Q. Were there any other vessels around you, besides the "Point Loma"?

A. Yes, the tugboat "Clark"--the "Ray R. Clark".

(Testimony of Leonard Smith.)

Q. I wonder if you would indicate where the "Ray R. Clark" was lying?

A. Where the "H-10's" name is here.

Q. A little closer to the port bow of the "Point Loma"? A. Yes.

Q. When did you take your position with the "H-10" where you have indicated?

A. Do you mean relative to the collision?

Q. With reference to the collision, yes.

A. About 20 minutes before the collision.

Q. About 20 minutes before the collision; and until just before the collision was there any change in the position of your vessel and the "Ray R. Clark", that is, any substantial change? [282]

A. Let me get that straight; I have such a headache. Will you repeat the question?

Q. Will you repeat the question, please, Mr. Dewing?

(Question read by the reporter.)

A. No.

Q. When you took that position, what was the condition of the weather?

A. It was, the way I would describe it was patchy fog, that morning.

The Court: What?

A. Patchy fog; that is, it would be thick for a few moments, and then the wind would carry it off. It just came in clouds.

Q. By the way, Mr. Smith, what has been your sea experience?

(Testimony of Leonard Smith.)

A. I have been operating small boats for about 15 years, and a year or so of that was with tow-boats; commercial fishing; and one year on an oil tanker for the Standard Oil Company.

Q. How long ago was that that you were on the oil tanker? A. 1929.

Q. And you are now manager of the "H-10" Taxi Company? A. That's right.

Q. And handle the entire fleet?

A. Yes. [283]

Q. And has most of that experience, on small boats and water taxis, been around San Pedro?

A. San Pedro, and all the islands, and Mexican waters.

Q. That is, around in this area?

A. In this area, yes.

Q. How far was it between the "Point Loma" and the "Olympic" as it lay there that morning?

A. I estimated between 500 and 600 yards.

Q. About 1,500 or 1,800 feet?

A. Yes, sir.

Q. How far between the "Point Loma" and the "Rainbow"?

A. There was a greater distance. It has been a year, and I don't really recall what it was.

Q. You wouldn't want to give an estimate at this time?

A. It must have been 800 yards anyhow.

Mr. Adams: Was that between the "Point Loma"—

(Testimony of Leonard Smith.)

Mr. Cluff: Between the "Point Loma" and the "Rainbow"? A. Yes.

Q. What was the visibility that morning, at about the time you came to rest alongside of the "Clark" and the "Point Loma"?

A. Well, we could see the other two barges from where we were.

Q. That is, you could see the "Rainbow" plainly?

A. Yes.

Q. Did the fog seem to be any thicker in any particular [284] direction, or was it a uniform fog?

Mr. Adams: Do you mean at that time, Mr. Cluff?

Mr. Cluff: At that time, yes.

A. I wouldn't be able to answer that.

Q. Was there any change in the weather condition, any substantial change, between the time you took your position there and the time of the collision? A. Not that I remember.

Q. Now, at the time you took your position there, did you hear the bells on the barge?

A. No, I had my engine running. I was looking for fish. We had been fishing out there all morning, and we had fished astern of the "Point Loma", and we moved around alongside this tug, and were lying there, with the engine idling.

Q. Did you have a line to the tug?

A. No.

Q. I assume that the taxi "H-10" has a cabin, where the operator stands forward in the cabin?

(Testimony of Leonard Smith.)

A. Yes.

Q. He is behind the engine?

A. Practically alongside of the engine.

Q. I suppose that is an enclosed space, with the engineroom?

A. Yes. It is all enclosed; it is a Diesel engine.

Q. What was the first indication you had of the approach or presence of the "Sakito Maru" in the vicinity? [285]

A. My attention was brought to it by the operator of the boat, the "Clark", who was aboard the "Point Loma". He called the deck hand; he was aboard the tug, and told him to start blowing the whistle, to try to attract this ship's attention, and he blew the whistle a few times, and called to me. I forget his exact words, but he asked me to look at that ship over there, how close it was coming to this barge.

Q. Then did you look in the direction of the "Olympic"? A. Yes.

Q. What did you see?

A. I could see this ship coming from the south, coming toward the "Olympic".

Q. From your point of view there alongside the "Point Loma's" bow, how did this ship that you saw bear with reference to the "Olympic"?

A. From right where I was lying it seemed she was coming right directly to her.

Q. Did you see her heading over the "Olympic's" bow?

(Testimony of Leonard Smith.)

A. No, you could see her over the top of the "Olympic".

Q. That is, over the "Olympic's" deck?

A. Yes.

Q. Do you know between which of the three masts on the "Olympic" you could see her?

A. No.

Q. All right. You could see the ship approaching. [286] How much of the ship could you see?

A. I could see the bow enough to distinguish that it was a ship.

Q. That is, you could actually see the structure of the bow? A. Yes.

Q. I want to show you a picture, "Olympic" Exhibit No. 5, and ask if you recognize that as the "Sakito Maru"? A. I do.

Q. Will you indicate on Exhibit No. 5, just by pointing with a pencil, what part of the vessel you could see over the "Olympic's" deck?

A. Well, from a position like this, you could see the superstructure. This would be a poor photograph to explain what you could see.

Q. I realize that. Indicating a point, Mr. Adams, about the height of the hawse pipes?

Mr. Adams: What is this?

Mr. Cluff: The witness has testified that he could see over the "Olympic's" deck the bow of the "Sakito". A. She was well over here.

Q. Above the hawse pipes?

A. On this side, and you could see up here, on her superstructure, and mast.

(Testimony of Leonard Smith.)

Q. How far away from the "Olympic" was it when you looked at it? [287]

A. From the "Olympic"?

Q. Yes, from the "Olympic", or from yourself, if that is easier to give it, from your position.

A. I would estimate it to be possibly 600 yards or more the other side of the "Olympic".

Q. About 600 yards the other side of the "Olympic". After seeing the vessel in that position, what did you do?

A. I started up. While the engine was running, I just got back in the seat, the one I had in the boat, and put it in gear, and started over there.

Q. You started over toward the "Olympic"?

A. Yes.

Q. For what reason did you go over there?

A. I don't know. It just seemed to me like something was going to happen. I went over there; that was all.

Q. Just tell in your own way what you did, and what you saw from that point, when you started over?

A. As we started over, we were lying westward, that is, when we were lying there, our bow was headed west, and we more or less went into a circle to go into that direction, and we came out of line of where the "Olympic" was not in line with the ship, and it looked for a minute like she wasn't going to hit; that is, she was coming more toward the bow, it seemed to me, and then it suddenly started

(Testimony of Leonard Smith.)

turning into the "Olympic", just as though they started backing down, the propellers pulling it sideways. [288]

Q. Do you now know whether the "Sakito" was a single or a twin screw ship? A. I do not.

Q. I believe it is in evidence now that she was a twin screw ship.

A. It appeared there at the time that it was a single screw ship, and its backing down caused it to go to one side, and turn as though they had lost their rudder power, and turned into the ship.

Q. After she turned into the ship, how long was that before the impact?

A. It was just a minute. It's not very clear. Just a matter of seconds, though.

Q. What was the speed of the "H-10-17"?

A. 13 knots.

Q. How long does it take—I believe you said the motor was running as you were lying there?

A. It was.

Q. So it was just a matter of getting it into gear, and picking up her headway?

A. Yes.

Q. How long did it take to attain full speed through the water, from the time you started up?

A. It would be about 20 seconds.

Q. By that time she would be doing her 13 knots?

A. Yes. [289]

Q. So the majority of the distance that you traversed between your first position and the "Olym-

(Testimony of Leonard Smith.)

pic" would be at your full speed of about 13 knots?

A. Approximately, yes.

Q. Did you observe as you were crossing the interval there—did you see the "Lillian L", one of the "Olympic" shore boats? A. Yes.

Q. Where was she lying?

A. Alongside of the gangway of the "Olympic".

Q. And the bow in which direction, if you recall?

A. His bow was headed west, the same as the "Olympic".

Q. Headed in the same direction as the bow of the "Olympic"? A. Yes.

Q. At the time of the impact, I wonder if you would indicate on the drawing here, just point out about how much of the relative distance between the "Point Loma" and the "Olympic" you had reached?

A. At the time the ship collided?

Q. At the time of the collision, yes.

A. I was right here.

Q. Indicating a point about one point off the bow of the "Olympic", would you say?

Mr. Adams: Let the diagram speak for itself on that score. [290]

Mr. Cluff: All right. We will just mark that.

A. Just a fraction more.

Q. We will mark that with an "S", indicating the testimony of Smith. At that time were you watching the "Olympic"?

(Testimony of Leonard Smith.)

A. I was watching both ships.

Q. How did the "Olympic" react at the time of the crash? A. She heeled over.

Q. To her starboard, of course?

A. To her starboard, and was shoved sideways. I wouldn't know just how far it was; it was quite a distance.

Q. Can you give an estimate in reference to the difference between her first position and the position of the "Point Loma"?

A. It was about 65 or 75 yards, she was pushed toward the "Point Loma".

Q. Did or did not she seem to swing toward the westward as well as move up toward the "Point Loma"?

A. I don't know; from the position I was in I would be unable to tell that, because I was on her bow coming back again.

Q. Well, her port or starboard side, I take it, didn't seem to broaden after the impact?

A. I couldn't say. I didn't see it.

Q. Did her movement make any change in the relative position between your taxi and the "Olympic" from the position you have indicated on the point marked "S"? [291] A. Oh, yes.

Q. Just describe that if you will.

A. Well, can I show it on there? I was in this position and at the time of the impact, and then the ship passed me, coming this way.

(Testimony of Leonard Smith.)

Q. That is, she moved toward the breakwater from you?

A. Yes; she came this way.

Q. Putting you, really, on her port bow instead of on the starboard?

A. And I had to turn and come back this way.

Q. Will you draw a line indicating your course after the impact? Just draw a little line there.

A. After the impact?

Q. Yes.

A. Let's see; like that.

Q. And, I take it, you made that turn for the purpose of getting in on her starboard side?

A. Yes.

The Court: Make that "S-1".

Mr. Cluff: "S-1", mark the dotted line "S-1".

Q. Were you able to hear the sound of the crash?

A. Oh, not very well.

Q. You have no particular—

A. I don't remember of hearing the sound.

Q. Did you hear whistle signals from the "Sakito Maru" at the time of the crash or at any time before it, as you [292] were crossing over?

A. I don't remember. That engine I have is very noisy, the one that was in the boat at that time.

Q. Could you see from your position there while you were making the turn how deeply into the superstructure of the "Olympic" the bow of the "Sakito Maru" had progressed?

A. As she went by us the bow appeared to be

(Testimony of Leonard Smith.)

over halfway through the deck of the "Olympic".

Mr. Cluff: What was that answer, Mr. Bargion?

(Answer read by the reporter.)

Q. As you approached the "Olympic" there could you see the position forward of the after house where the "Olympic's" bell is? A. No.

Q. You couldn't see that?

A. Could I see the condition of the house where the bell was located?

Q. See the position of the bell? A. No.

Q. I mean could you see the bell?

A. No; I never did pay any attention to the bell.

Q. Or could you see anybody standing at the bell? A. No.

Q. Had you prior to the time you took your position as you have indicated there been aboard the "Point Loma"? A. Yes, sir. [293]

Q. What time was that with reference to the collision?

A. Approximately 5 o'clock in the morning.

Q. Approximately 5 o'clock in the morning. Were the bells from the barges ringing at that time?

A. Yes, sir.

Q. Could you hear the "Olympic's" bell?

A. I could.

Q. Could you hear the "Rainbow" bell?

A. Yes.

Q. Now, I wonder, will you tell us after you circled around and approached the "Olympic's" star-

(Testimony of Leonard Smith.)

board gangway, will you tell us just in your own way what you observed about the two vessels?

A. Well, I knew in my own mind that the ship was going to sink very quickly because it evidently had a large hole in it, and the ship being pushed sidewise or sideways, it pushed the "Lillian L" out of position to where he couldn't come alongside. So we went alongside of the gangway with our bow to pick up the passengers.

Q. Excuse me just a moment. As you came around the "Olympic's" bow there to come on the starboard side was the "Lillian L" still alongside, or had it moved away?

A. No, sir; it was gone from there then.

Q. Was she in a position to regain a position by the gangway? A. I believe not. [294]

Q. That is, he had to make too big a circle?

A. Yes.

Q. So, then, you brought the "H-10" alongside?

A. Yes, sir.

Q. At what point?

A. At the gangway, which was located at the after end of the well deck.

Q. At the time you came alongside was the lower floor of the gangway above or below the water?

A. It was below the water at that time.

Q. Below the water. And did you—by the way, you had a deck hand?

A. Yes, sir; had two of them.

Q. Where was he during this approach?

(Testimony of Leonard Smith.)

A. Well, when we arrived at the first position that we have here, marked with "S", the bow of the "Olympic", they were in the cockpit along with me.

Q. The deck hand was in the cockpit with you?

A. Yes. And after we left there and came back to circle around to the gangway, why, I asked them to get on the bow, as the ship was going down fast and it would pull us over on top of it if we put the boat alongside, so we just had to use the bow; and they went up on the bow of the boat to assist the passengers in getting aboard.

Q. What part of the taxi did the passengers come aboard on? Did they come aboard on the bow or on top of the [295] house or in the cockpit?

A. They came aboard on the bow.

Q. Did any of them come aboard on top of the house? A. No.

Q. On the bow and on your cabin, that was in line? A. Yes.

Q. Did you see the vessels separate before you came alongside?

A. Yes; I was right on the bow. I had to wait until the motion of the ship stopped before I could go alongside and, as they parted, or as the "Sakito" backed out, why, we went in alongside.

Q. Then, before you took your position alongside you definitely saw the "Sakito" back out?

A. Yes, sir.

(Testimony of Leonard Smith.)

Q. Prior to that time had the "Olympic" retained her starboard list?

A. She seemed to straighten up at the time.

Q. After they came to rest or before they came to rest?

A. After they came to rest, as I recall.

Q. Did she straighten up entirely?

A. That I wouldn't know.

Q. But before you came alongside with the taxi at all you definitely observed the separation of the "Sakito"?

A. Yes. That is what I had to wait for.

Q. Were you in a position as you made the turn to see [296] the "Sakito's" stern, to see whether her screws were turning?

A. No. I remember their backing down and I remember seeing the wash.

Q. Seeing the wash as she backed down; that is, the wash of quick water towards her bow from the screws? A. From the bows.

Q. At the time you saw that wash had the vessels begun to separate? A. No; that was before.

Q. That was before?

A. Yes. I was on the bow of the—

Q. At the time they separated were you in a position to see whether the wash was continuing?

A. No.

Q. By that time you had come around on the other side of the "Olympic", I take it?

A. Yes. We were judging the speed with which

(Testimony of Leonard Smith.)

the ship was slowing down, to catch her at a time she became almost stopped.

Q. Did you as you came alongside—by the way, do you know Jack Greenwood, who was the keeper or barge-master on the “Olympic”?

A. No, sir.

Q. Or Joe Culp, the bake boy? A. No, sir.

Q. Or Louis Ohiser, the watchman?

A. I met Ohiser afterwards. [297]

Q. At that time, would you be able to recognize any of them on deck of the “Olympic”?

A. At the time?

Q. Yes. A. No, sir.

Q. After the passengers began to come on board how did the side of the “Olympic” seem with reference to your position there in the cockpit of the taxi?

A. Do you mean in height or—

Q. Suppose you tell the Court. Your line of vision would be how high above the water?

A. Approximately seven or seven and one-half feet.

Q. That would be your own height plus—

A. That would be the level of my eye.

Q. —the freeboard of the floor of the taxi. From your point of view there how much freeboard was there on the “Olympic” as you took your position alongside?

A. When we first came alongside she had, as I remember, about nine feet.

(Testimony of Leonard Smith.)

Q. That is, then, the rail at the time you came alongside would be considerably higher than the taxi's roof?

A. Not much higher than the roof, but a good deal higher than the deck.

Q. A good deal higher than the deck. And that, I take it, rapidly decreased as you lay alongside there.

A. It did. [298]

Q. By the way, you did not put a line on her, I suppose, but were just holding her up with the engine?

A. Just with the engine, yes. That was one of the things I had the deckhands be sure not to do, to put a line on her.

Q. At the time you came alongside and started to take on the passengers, just tell us what happened?

A. Well, we held the boat right up against the bow and they helped the passengers aboard. They all had on life belts and were more or less clumsy with their fishing tackle and their life belts and not being familiar with boats; but they came aboard one at a time, being assisted by the two men that I had, and then later on, one of the men from the barge jumped over and helped them on.

Q. Is that the man you now know as Louie Ohiser?

A. That is right. And then as the ship went clear out of sight, why, we managed to pick up one passenger clear out of the water, and then we were washed over the side of the ship and side.

(Testimony of Leonard Smith.)

Q. That was the young girl that you picked up out of the water? A. Yes.

Q. So the "Olympic" really literally went down with the "H-10" alongside, and you were washed over where the deck would have been?

A. Yes. And then we backed down as hard as the engine would back and hold off of it. [299]

Q. I believe, Mr. Smith, that you received a very well deserved letter of commendation from the Bureau of Navigation for your services in this situation.

A. That was the Department of Commerce, Washington, D. C.

Mr. Adams: I might add that I have previously voiced to Mr. Smith, in behalf of the N. Y. K. Line, the admiration and commendation for his courage.

Mr. Cluff: I think we can all join in that.

The Court: I am glad counsel agrees on something.

Mr. Adams: That is correct. We will stipulate to that, if the Court please.

Mr. Cluff: Yes; we will. Let the record show that that, I think, is unanimous.

Q. After the vessel disappeared, Mr. Smith, just tell us briefly what took place after that.

A. Well, we backed clear of the ship, that is, this position, because I was familiar with those things as to what happens afterwards; the tanks turn loose and boats and different articles, they come up out of the water with a great force; and we

(Testimony of Leonard Smith.)

had to be clear. And my idea was to lay off just clear and wait for the other people to come up, because they were all in life belts and I figured they would all come up and we would get them. There was about five minutes or so, why, the one man's body came up, Mr. Karsh, as I remember, and we called a Coast Guard and asked them to send a pulmotor out; and they asked us to bring him in and they would send a Coast Guard out [300] to relieve us, and for us to come on in. So we did that, took the passengers in.

Q. By the way, was Mr. Karsh—pardon me, had you finished? A. I guess so.

Q. Was Mr. Karsh alive when you recovered his body? A. No, sir.

Q. That is, you got no signs of life?

A. No, sir.

Q. Were other boats around at the time, that is, immediately after the sinking?

A. Yes. I remember a small boat painted gray.

Q. A small boat what?

A. A small boat painted gray.

Q. Oh, painted gray.

A. I don't remember the name of it, or didn't notice the name of it, rather.

Q. Were you joined in this search by the "Lillian L"? A. Yes.

Q. Any other vessels that came along, other boats or vessels?

A. There was a life boat from the Japanese ship, the "Sakito Maru" later, but I don't remember—I remember seeing it and that is all.

(Testimony of Leonard Smith.)

Q. Did the Coast Guards small boat come out, apparently that came from the "Hermes"?

A. He came out, yes. [301]

Q. That would be a half an hour or an hour later?

A. About a half hour or so.

Q. Did you know a boatswain or boatswain's mate or warrant officer by the name of "Moynahan"? A. Moynahan?

Q. A Coast Guard man.

A. It seems familiar, but I don't recall.

Q. I will identify him this way, as the officer who was in charge of the small boat launched by the "Hermes". I was wondering if you had any conversation with him about the collision?

A. Well, we went aboard one of the Coast Guard boats at the base after we were there, and they asked a few questions; but we went aboard for the purpose of getting a cup of coffee while we were waiting.

Q. Well, you didn't tell any—or did you tell any Coast Guard officer that you had been fishing about a half a mile southeast of the "Olympic" and hear her bells; you could not see her, but saw the "Sakito Maru" pass just before the collision?

A. No, sir. As I recall, we talked to the cook. I don't remember the name of the boat we were on, but I don't believe it was the "Hermes", but it was one of that type.

Q. At any time when you were out there right around the three barges could you hear a diaphone on the breakwater?

(Testimony of Leonard Smith.)

A. Oh, there was times we could hear it. [302]

Q. Is it audible out there in that district?

A. When the weather is clear enough, if it is not too dense.

Q. When the conditions are favorable. Do you have a definite recollection of hearing it at any time that morning?

A. Yes; I remember hearing it.

Q. At the time of the collision would you say, or at the time just before the collision, you were down in the cockpit with the engine running on the taxi?

A. Yes, sir; as far as the engine was running, ours was.

Q. And you did not hear a diaphone or anything else? A. No.

Mr. Cluff: That is all, thank you.

The Court: I have a few questions I would like to ask.

Q. If I understand your testimony correctly, when you first observed the bow of the "Sakito Maru" over the "Olympic II", it was some 600 yards south of the "Olympic"? A. Yes, sir.

Q. That would make it about how far from you?

A. About 1200 yards.

Q. About 1200 yards. And you could see her distinctly at that time?

A. The superstructure and top part of the hull I could see.

(Testimony of Leonard Smith.)

Q. At the time that you came up to the "Olympic II", you say that she was sinking rapidly? [303]

A. At the time we went alongside.

Q. Yes. And had the "Sakito Maru" withdrawn at that time? A. It had.

Q. Did you observe whether or not the "Olympic II" was sinking before it withdrew?

A. Yes; it was taking on water.

Q. Did it seem to continue to go down about the same speed all the time?

A. Oh, no. When the vessel, the "Sakito" actually pulled clear it just seemed to open up the hole and down she went.

Q. I know, but did the boat seem to drop more rapidly then? A. Yes.

Q. More rapidly after she withdrew than before?

A. Yes.

Q. You were not in a position to judge anything of the speed that the "Sakito Maru" approached?

A. Well, not anything accurately; no, sir.

The Court: That is all. [304]

Mr. Cluff: May I ask just one or two more questions suggested by the court's line of inquiry?

Q. Mr. Smith, when you were in a position to see the "Sakito's" screws reversing, you were then on the starboard side ahead of her bow and around on the port side of the "Olympic's" bow?

A. I was on whose starboard side?

Q. On the port side, not starboard side. I changed that.

(Testimony of Leonard Smith.)

A. Yes; I was on the port side of the "Olympic."

Q. And then where were you when you saw the separation occur?

A. I was on the starboard side.

Q. You had gotten around to the starboard side?

A. Yes, sir.

Q. And from that point you had proceeded practically three-fourths of the length of the "Olympic" up to the gangway?

A. Yes, sir.

Q. And then when you came alongside the free-board that you have indicated in the previous testimony looked about like nine feet?

A. It seems to me that is what it was.

The Court: Another question I had to ask, too.

Q. You say that you have been operating taxis in that vicinity for a long time? [305]

A. Yes, sir.

Q. Running taxis to different fishing barges?

A. Well, not particularly fishing barges but—well, there are at times fishing barges and sometimes—

Q. How long have you been familiar with this Horseshoe Kelp bed?

A. Since 1934, when I first started fishing. That is when I first knew what the Horseshoe Kelp was, or why it was called the Horseshoe Kelp.

Q. To what extent have you been going out there since then?

A. Since then I have fished there every night for

(Testimony of Leonard Smith.)

a month after that and had been fishing for a month prior to that and stayed there overnight.

Q. Have you observed other vessels out there fishing? A. Yes, sir.

Q. To what extent?

A. Well, some nights there would be as many as 25 small boats fishing out there.

Q. Used both for commercial and pleasure fishing?

A. At the time I was commercial fishing and on weekends carrying charter parties.

Q. How long have there been any barges located out there?

A. Well, ever since the spring of the year.

Q. I know, but— [306]

A. You mean the spring of 1940? Oh, you mean in years prior to that?

Q. Yes. Were there any barges there in 1934?

A. Yes, sir; there have been several out there.

Q. There was a barge there in 1934, was there?

A. Yes; I believe the "Samar" was there at that time, 1934 and 1935.

Mr. Cluff: That is the "Rainbow" barge.

A. It was later called the "Rainbow" barge, but at that time it was called the "Samar".

Q. By the Court: Have there been barges there ever since?

A. Not continuously: they are only operating during the fishing season.

Q. That is, from spring till late in September?

(Testimony of Leonard Smith.)

A. Yes.

Q. Have they been there each year?

A. As I recall, yes.

Q. You know that that's the vicinity in which vessels pass entering San Pedro, do you not?

A. Yes, they pass there frequently.

Q. On both sides of the barges?

A. I saw them on both sides.

The Court: That's all.

Q. By Mr. Cluff: Would you say, Mr. Smith, that the majority of the vessels passed to the westward or eastward [307] of the barges?

A. The majority of them passed to the eastward.

Q. That is, toward the Long Beach side?

A. Yes, sir.

Q. Do you recall other barges than those three, that were there in 1940, on the bank? I suggest the "Empress". A. Yes.

Q. I remember some years ago a man by the name of Joe Hensel had a flat bottom barge, the "Penobscot"—do you remember her? A. Yes.

Q. Can you name any other barges that have been on the banks during the past dozen years?

A. The "San Juan", for one. She was there in the summer of '40.

The Court: The summer of 1940?

A. Yes.

The Court: In other words, there were four there during 1940 for a while?

A. For a while there were four. I don't remember the names of those fishing barges.

(Testimony of Leonard Smith.)

Mr. Cluff Mr. Anderson mentioned the barge "Wolfman." Do you know her?

A. No, sir.

The Court: Do you remember a barge that had a street car on top of it? [308]

A. Yes, I do. We saw the street car come floating in.

Q. By Mr. Cluff: Was that the "Empress"?

A. I don't believe it was the "Empress". The "Empress" is still afloat.

Q. Is this particular barge the one that broke up?

A. Yes.

Q. A couple of years ago?

A. I don't remember how long ago it was. I remember seeing the street car there on the Long Beach pier.

Q. The street car is new to me. I have no further questions.

Mr. Adams: If the court please, just so that I can preserve the record——

The Court: You may have it understood that the questions the court asked relative to the kelp bed are subject to your objection, and the same ruling; and I might state, with that evidence, the court has received that, and I would be glad to have the matter discussed in the briefs, and the court can then attempt to evaluate it.

Cross-Examination

Q. By Mr. Adams: Mr. Smith, during the occasions that you have been out to the Horseshoe Kelp

(Testimony of Leonard Smith.)

fishing, and have noticed merchant vessels passing the barges anchored there, or other fishing vessels anchored there, have you noticed how close they came to the barges on those occasions? [309]

A. Yes, sir, they at times came fairly close.

Q. Have you observed them ever pass the barges, so as to go between the "Rainbow" and the "Olympic", or the "Point Loma"?

A. Yes, sir.

Q. You have observed vessels, have you not, pass the "Point Loma" and the "Olympic" to the westward? A. Yes, sir.

Q. Would that be true of vessels going in both directions, that is, entering Los Angeles Harbor and leaving Los Angeles Harbor?

A. As a rule, entering.

Q. As a rule, entering? A. Yes, sir.

Q. Have you ever been out there in fog, other than on those occasions, when merchant vessels came in close proximity to the barges, or to any of them?

A. Yes, sir, I have been along the "Rainbow" barge, or the "Samar".

Q. Was that during the summer of 1940?

A. Yes.

Q. Was there more than one occasion when that happened? A. Yes.

Q. Would you say it happened frequently?

A. No, not frequently. Let me make it clear: I fished every night alongside of the barge "Rainbow".

(Testimony of Leonard Smith.)

because the [310] fish seemed to stay there—the particular fish I was after they stayed around this barge, and I fished there every night.

Q. Did you consider, while you were there, and while the other boats were there, that you were near or in the lane customarily followed by vessels entering and leaving Los Angeles Harbor?

A. No, sir, not as a lane, because all of that vicinity out there is more or less the same way.

Q. You would consider all the vicinity out there a lane?

A. Not particularly a lane, but any part of it out there a ship may travel through.

Q. You might expect to encounter a ship either entering or leaving Los Angeles Harbor in any part of that area? A. Any part of it, yes.

The Court: When you say that area, how large an area do you mean?

A. If you are lying in a position three miles from the lighthouse, most any point from the lighthouse, from east to west.

The Court: The area would cover several miles then? A. Yes.

Q. By Mr. Adams: The traffic would fan out, wouldn't it, from the entrance to the Harbor?

A. That's right.

Q. The closer you are to that entranceway the more [311] traffic you might expect to encounter, is that true?

A. That's right, because some ships leaving the

(Testimony of Leonard Smith.)

lighthouse go right directly toward Point Firmin, almost parallel with the breakwater.

Q. Those vessels that are bound for the Canal, and ports along the Coast of Mexico and Central America leave the Harbor entrance on a course of about 160 true, do they not? A. Yes, sir.

Q. Vessels coming up from those ports, entering Los Angeles Harbor, approach on a course of about 340 degrees true, do they not? A. They vary.

Q. Have you observed them following a course which would be approximately 340 degrees true?

A. Coming in?

Q. Yes.

A. Yes, sir, we have a great many of the pilots who will go out and meet the ships coming in from the Canal Zone.

Q. How far do they go out when they meet them that way?

A. It all depends on how the pilot feels. Sometimes they will go out seven or eight miles, and at other times they will meet them within a mile of the lighthouse.

Q. Have you, on occasions, when you have gone out several miles, sighted vessels coming up from the Canal Zone [312] in close proximity to the barges?

A. Yes, sir.

The Court: When do they usually pick up their pilots?

A. As a rule the majority of the pilots, especially the Harbor pilots, catch the ship within a range of

(Testimony of Leonard Smith.)

a mile from the lighthouse, but Mr. Kelton, of the American-Hawaiian Company, he sometimes likes to go away out, and meet the ship coming in.

Q. I am sorry; I did not hear the last answer.

A. Mr. Kelton, of the American-Hawaiian Steamship Company sometimes likes to go away out and meet the ships and ride in.

The Court: In other words, about two miles on this side of where the collision occurred they usually pick up the pilot?

A. That's right, as a rule.

Q. By Mr Adams: Mr. Smith, I realize that it has been a year since this collision happened. You recall that you testified before the A. Board hearing in San Pedro, on September 7? A. Yes.

Q. I want to call your attention to your testimony there, two or three days after the collision, regarding the distance that you thought that the "Sakito" was from the "Olympic" at the time you first sighted her. I will read you questions, and the answers that you gave, and you tell [313] me whether or not you recall this taking place:

"Q. When the 'Sakito Maru' approached the barge 'Olympic', did it appear to be coming out of the fog all at once or slowly?

"A. When I saw the ship, it seemed to be clear, but it was very close to the 'Olympic' at that time. The ship was sighted, oh, I guess a full minute before I saw it, and they were talking about it up there, and called down to the

(Testimony of Leonard Smith.)

deck hand to blow his whistle. I didn't immediately look again that way, and then the fellow on the boat, after blowing his whistle for a few times, called up and told him it looked like it was going to hit, and that was when I looked at the ship, and it looked to me like it was in the neighborhood of 150 or 200 yards from the 'Olympic' at that time. My boat was headed—the bow of the boat was west southwest; my windows were dirty, I looked out the aft end of the cabin, and saw the ship, and rushed up—have a seat there—and I got on the seat, and put it in gear, and then had to turn before I could see the ship again."

Do you recall that testimony? A. Yes.

Q. Is that substantially correct?

A. Yes, sir.

Q. Do you wish your testimony regarding the distance that the "Sakito" appeared away from the "Olympic", that you gave here, to accord with the testimony that you gave [314] at that time?

A. They are really the same.

The Court: What explanation have you to make of the two differences?

A. The only difference I can see there is, at the time he asked me where I saw the ship, and the time the distance was asked there.

Q. By Mr. Adams: You say "That is when I looked at the other ship, and it looked to me like it

(Testimony of Leonard Smith.)

was in the neighborhood of 150 or 200 yards from the 'Olympic' at that time." Do you think the distances were clearer in your mind two or three days after the collision than perhaps they are now?

A. I imagine they were.

The Court: If the boat was traveling $6\frac{1}{2}$ knots an hour, how far would it travel in a minute?

Mr. Cluff: It travels about 650 feet a minute.

Mr. Adams: If it traveled 6 knots per hour, it would travel 608 feet per minute, and if it was traveling 7 knots per hour, 709 feet.

Mr. Cluff: That would be 658 feet.

Q. By Mr. Adams: Mr. Smith, do you recall talking to Mr. Roethke, of our office, on the date of this collision? A. I do.

Q. Do you recall having drawn a diagram for him, or directing a diagram to be drawn of the boats in the vicinity at the time of the collision? [315]

A. I think I drew one.

Mr. Cluff: Let me see it please.

Q. By Mr. Adams: I show you a diagram, and ask if that is the diagram you recall having prepared at that time? A. Yes, that is mine.

Q. That was drawn on the day of the collision, wasn't it, on September 4?

A. I believe it was drawn that evening, yes.

Q. That is your signature on it? A. Yes.

Q. Does the sketch—

The Court: Which is north in that?

The Witness: Here.

(Testimony of Leonard Smith.)

Q. By Mr. Adams: Will you draw an arrow pointing to that?

A. North would be about in this direction.

Q. You have drawn two sketches on the same diagram, and neither one with reference to the San Pedro light, are they?

A. No; just the approximate location.

Q. The sketch which is on the right hand side is supposed to represent the positions of various vessels at the time you first sighted the "Sakito", is that not correct? Do you see these designations at the top?

A. Yes. This is the same as this here. This was the time that we saw the ship, and it seems as though I designated that to come this way. [316]

Q. Yes, I think you did it here.

A. Yes, that is what this represents.

Q. There is an object in this diagram to the right of what we have been talking about, which is designated as "Sakito Maru": then another: then an object: then there is a series of dots: then from it is a series of dots. Do those dots, and does that object indicate the direction of the "Sakito Maru" as you observed it at that time?

A. As I observed it.

Q. You have over here another sketch, which is supposed to represent the positions of the vessels at the time of the collision, and there is one sketch showing the "Olympic" and the "Sakito" at the time of the impact. I take it? A. That's right.

Q. And the other sketch shows—

(Testimony of Leonard Smith.)

A. The time they stopped.

Q. At the time they came to rest?

A. Yes.

Q. Then you have a sketch of the course, of your course, before you bordered the "Olympic", or came alongside the "Olympic"?

A. That's right. This is supposed to represent where the ship passed it.

Mr. Adams: The witness is marking a little pencil mark on the second sketch. I will offer that in evidence.

Mr. Cluff: No objection. [317]

The Court: Admitted.

The Clerk: "Sakito" Exhibit C.

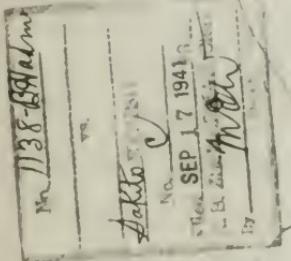
No. 1
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 13 1942

PAUL F. O'BRIEN,
CLERK

" at time first sighted



PROBATION

Bart
Sawyer

Miss Mary Clark
R. V. RAY CLARK

Ronie
B. Simpson

" S. A. T. M. A. C.

Lillian
O'Hare

Bob
O'Hare

Bill
Trotter

" That where in
proximity of
residence of
" Capone"



(Testimony of Leonard Smith.)

Q. By Mr. Cluff: May I ask a question about that before you resume?

Mr. Smith, in the drawing of this little sketch, made on the night of the collision, is it actually yours, or did Mr. Roethke draw it as you described it?

A. I drew it myself. This is all my writing, except this and this.

Q. The little figures are drawn by you?

A. Yes.

Mr. Adams: The portion indicated that was not in your writing, was the name of the "Olympic" on one, and the "Sakito" on the other? A. Yes.

Q. Now, Mr. Smith, I direct your attention to the question of the amount of freeboard of the "Olympic" at the time you came alongside. I am going to read you certain testimony you gave again at the A. Board hearing, with reference to that feature, so as to refresh your recollection. This on page 374 of the transcript:

"Q. Did you have any difficulty getting alongside the barge?

"A. We had to wait until the speed—she was going sideways; the ship was pushing her sideways, and we had to wait until she stopped going before we could go alongside. [318]

"Q. Was the barge on an even keel when you were alongside, or was she listed?

"A. She was listed slightly.

"Q. Which direction, to the starboard?

"A. To the starboard.

"Q. To the barge's own starboard?

"A. Yes.

(Testimony of Leonard Smith.)

“Q. How much freeboard did the barge have when you got alongside of her?

“A. About seven feet.”

Do you recall that testimony at that time?

A. I do.

Q. Do you think that testimony more accords with your recollection of the event then?

A. It was between seven and nine feet, approximately.

Q. Did I understand you to testify that you at no time heard the whistle from the “Sakito”?

A. I don’t believe I heard the whistle from her. I remember hearing a whistle, but I don’t recall at the present time whether I heard one or not.

Q. You were in this cabin, with your motor idling, during the time you were lying alongside the “Clark”? A. Yes.

Q. Were you engaging in conversation with someone at that time also? A. Yes. [319]

Q. With whom were you talking?

A. A person named Frank.

Q. Collins? A. No.

Q. Wydell?

A. Wydell. I have known him for nine years, and I never can remember his last name.

Q. Where was he?

A. He was aboard the tug “Clark.”

Q. With reference to the condition of the fog around 7 o’clock, how would you describe the fog at that time?

(Testimony of Leonard Smith.)

A. I can remember the fog in general for the morning, but not right at 7 o'clock, because I paid no attention to the time.

Q. I am going to refer to your testimony again, and see if it might refresh your memory. This is testimony given by you before the A. Board hearing, page 379:

"Q. Mr. Smith, around 7 o'clock would you describe the fog as being variable?

"A. Yes, sir.

"Q. Intermittent in density?

"A. Yes, sir.

"Q. Did that condition prevail up to the time of the collision and for a short time thereafter? A. Yes, sir, it did.

"Q. And had the fog been intermittent and variable [320] prior to 7 o'clock?

"A. Yes, sir. I remember at one time I could see the barge 'Samar', known as the 'Rainbow' barge; a few minutes later I couldn't see it at all from the deck of the 'Point Loma'—"

Do you recall that testimony?

A. I remember most of it, yes.

Mr. Adams: Will counsel stipulate that testimony was given at that time?

Mr. Cluff: I have no doubt, Mr. Adams.

The Court: He says now that he doesn't remember. [321]

Mr. Adams: I am asking counsel for a stipulation.

(Testimony of Leonard Smith.)

The Court: You are using it, in a sense, for impeaching purposes, and he hasn't testified to the contrary; he just says he doesn't remember now.

Mr. Cluff: As far as this witness is concerned, I will stipulate that you can read his whole A Board record in, if you want to.

Mr. Adams: I have no objection, but I don't want to take up the time of the court. I don't think anything is to be added by doing it.

The Court: We are getting into a lot of cumulative matters now, gentlemen, and I am going to start to pinch down on you. You have to get down to the essential points, stop putting in cumulative evidence, things we have been going over and over again with every witness.

Mr. Adams: I have no desire to do it.

Q. Does the reading of that testimony refresh your memory on that point? A. Yes, some.

Q. Do you think what I have read is substantially correct now? A. Yes, sir.

Q. That is all.

Cross-Examination

Q. My Mr. Velpmen: Mr. Smith, were you able to see [322] the forecastle head of the "Sakito Maru" at any time before the impact?

A. Oh yes, I could see it.

Q. Did you see a man or men standing up there at the time? A. No.

Q. Did you see any man up there at any time on the "Sakito Maru"?

(Testimony of Leonard Smith.)

A. No; I didn't pay any particular attention; I was more interested in seeing how much damage was done to the barge.

Mr. Velpmen: That is all.

The Court: I would like to suggest to counsel that we have heard about enough of the recitals of the various parts of this collision. I think from now on we will try to hold the testimony down to the specific matters you have each charged against the two boats; in other words, I am interested, so far as the "Sakito Maru" is concerned, in her speed and visibility, and I am also interested in this question that you have raised as to whether or not the withdrawing was such poor seamanship as to have caused this additional loss of life of the other passengers; and it seems to me that is very essential, so far as the conduct of the "Sakito Maru" is concerned. The testimony is all right, so far as the look-out is concerned, but that is all negative testimony. There may be some other points I have overlooked, but instead [323] of going through these recitals, I don't think anything can be gained by it; and it is just making a cumbersome record.

Mr. Cluff: It is pretty difficult to elicit important points from lay witnesses, unless they are able to tell the whole story.

The Court: If you can't do it, the court will find out a way to do it.

Mr. Cluff: I will be very glad to have the court's assistance.

The Court: You are supposed to try this case. I am just making some suggestions which I expect to be followed. [324]

M. E. WALTER,

a witness called by and on behalf of the libelant, having been first duly sworn, was examined and testified as follows:

The Clerk: You will state your name.

A. M. E. Walter.

Direct Examination

By Mr. Cluff:

Q. Mr. Walter, you were on the "Marell" and were Mr. Gorthe's partner? A. That is right.

Q. Do you remember, after the "Marell" came to anchor, when you heard the first whistles of the vessel that later turned out to be the "Sakito Maru"?

A. Do I remember when I heard them—is that the question?

Q. Yes; after the "Marell" came to anchor, do you remember hearing any whistle from the vessel which turned out later to be the "Sakito Maru"?

A. Yes, I do.

Q. Directing your attention to that time, what was the visibility?

A. Well, I remember at that time it was clearing up, and we could see the "Rainbow" barge very plain, and I would say that the visibility was, oh,

(Testimony of M. E. Walter.)

almost half again the distance of what we were from the "Rainbow" barge. [325]

Q. Half again as far as you were from the "Rainbow" barge? A. Yes.

Q. You were how far from the "Rainbow" barge, do you think?

A. I would judge between a quarter and a half a mile.

Q. Did you hear the bells from all the barges?

A. Yes.

Q. Ringing how?

A. First one barge would ring; then the other barge would ring; and the third one would ring.

Q. At about what intervals?

A. It's hard to say. You hear these things, and being out there so many times you kind of expect them.

Q. Could you hear the foghorn on the breakwater?

A. I heard it earlier in the morning. I couldn't say whether it was at that time or not; I don't remember; but I heard it earlier in the morning.

Q. Did you see the "Sakito Maru" prior to the collision? A. Yes.

Q. Describe to the court where she was, and how she appeared when you first saw her.

A. Of course, after I heard the whistles we were looking for something to come through. I had called my partner to come up from in the cabin, and shortly after he came on [326] the deck, a few seconds, I

(Testimony of M. E. Walter.)

should judge, we saw a boat coming through the fog.
At that time she was just hazy, way off.

Q. How did she bear from your boat?

A. I was on the direct stern of our boat. I should judge it was a little bit to my left; that would be east of south.

Q. East of south? A. Yes.

Q. Just describe in your own way how she approached, and what you saw.

A. Well, the main thing is, of course, we were watching the boat approaching, and trying to judge in which direction it was going. First, when it first came out of the fog, it looked like it was bearing right at us; then as it came clearer, and we got a clearer view of it, we could see more the starboard side, so we knew it was bearing to the west of us.

Q. Could you form any estimate at any time as to how fast she was going?

A. Well, I don't know. I knew we talked about how fast it was going. It did not appear to us like it was slowing down at all; it seemed to us that it was going faster than boats usually go that come in there.

Mr. Adams: I move the answer be stricken as a conclusion of the witness.

The Court: That part may be stricken. [327]

Q. By Mr. Cluff: Can you give any estimate in miles per hour? A. I would say—

Mr. Adams: I object, on the ground that no proper foundation is laid, and that it calls for a conclusion of the witness.

(Testimony of M. E. Walter.)

The Court: Overruled. Answer the question.

A. It was going much faster—I would say it was going almost twice as fast as what we could go in our boat—what we usually travel in our boat.

Q. By Mr. Cluff: What is the full cruising speed of the "Marell"?

A. We usually run between five and six.

Q. Did you notice any change of course?

A. It appeared to me like it—at first it appeared like it was turning to port.

Q. Turning to her own port?

A. To her port, yes, as it first came into view; then later, as it got beyond our stern, or further toward the "Olympic," it appeared to turn to starboard.

Q. Toward the "Olympic"? A. Yes.

Q. How long was that before the collision?

A. Well, I should judge it was, oh, possibly 200 yards, or a little over; about half the distance of where it was from the "Olympic" to the "Point Loma," I should judge. [328]

Q. By the way, as the "Sakito" approached, could you hear the "Olympic's" bells? A. Yes.

Q. Ringing the same peals?

A. Up until just a few minutes before the collision. At that time they started in ringing loud and fast.

Q. How was that continuous ringing with reference to the turn?

A. I should judge it was just about at the time of the turn, if I remember right.

(Testimony of M. E. Walter.)

Q. Did you see the impact; see them crash together? A. I did.

Q. By the way, as they approached did you see any man on the foreward part of the ship, or the forecastle head, or on the foreward deck?

A. Not until just shortly before the collision.

Q. Describe what you saw just before the collision.

A. Just before the collision I saw a man's shape—it wasn't on the forecastle.

Q. Down in the well of the ship?

A. He jumped up, and waved his arm, and ran jabbering toward the bridge. Immediately they started ringing bells, and running up toward the bridge, and then I heard—I remember the blowing of a whistle before they hit; I remember that.

Q. You heard a whistle? [329]

A. Yes, just about the time they hit.

Q. How many whistles?

A. I couldn't say. I don't remember how many.

Q. Following the collision did you see the boats separate? A. Yes.

Q. How long was that after the impact?

A. I pulled anchor, and we turned—I don't know, but it didn't take me very long to pull up the anchor. It was about at the time I finished pulling the anchor that he began to back out.

Q. By the time you got the anchor up he was pulling out? A. Yes.

Q. Did you see the vessels separate?

(Testimony of M. E. Walter.)

A. Yes, they did. I was sitting up on the bow of the boat, and I saw them all the time.

Q. Did you see the screws reverse?

A. No, I wasn't watching anything like that. I was watching the two boats.

Q. How long had you been familiar with Horse-shoe Kelp? A. About since 1935 or '36.

Q. You fished there every year?

A. Every year.

Q. Several times a year?

A. I would say I have been out there at least twice a [330] week during the summer months.

Q. Tell the court, during that period of several years, about how many vessels frequented that bank.

Mr. Adams: Same objection.

The Court: Same ruling.

The Witness: May I have the question?

Mr. Cluff: Will you read the question please, Mr. Dewing?

(Question read.)

A. There were different numbers of vessels at different times of the year; different times of the week, and different classes of boats. You take weekdays, generally in a commercial fishing season, they would be mostly commercial boats out there, and, of course, Saturdays and Sundays and holidays, there would be lots of fishing boats there, sport fishing boats, and a lot of private boats.

Q. I take it that the bank was frequented by fishing barges, bait boats, and pleasure boats?

(Testimony of M. E. Walter.)

A. Practically every kind of a boat.

Mr. Adams: I object to that as leading and suggestive.

Mr. Cluff: I was just trying to find out. No further questions.

(Short recess.) [331]

Cross-Examination

By Mr. Adams:

Q. Mr. Walter, how many whistles do you recall you heard from the "Sakito Maru," in all?

A. Well, now, the first whistle, I wouldn't say; it was off in that general direction, and then we heard another whistle; then when I first called my partner was the first whistle I heard; that was shortly after we had seen the other two boats pass on the other side of the "Rainbow." I didn't hear his testimony, whether he brought that out or not. But I called his attention to these other boats passing the "Rainbow" barge, earlier in the morning.

Q. Do you have any recollection of having heard possibly two or three whistles from the "Sakito Maru"?

A. If that first whistle that I heard, off at a distance, was the "Sakito Maru," I would say three then, counting the one just at the time of the collision.

Q. Directing your attention to that first whistle that you heard off in the distance, how long was it after that before you heard another whistle?

(Testimony of M. E. Walter.)

A. I would say it was several minutes; if I remember right, it was quite some little time; in other words, it was not one right after the other; it was at the second time I heard the whistle was when I called my partner up from the cabin.

Q. Do you recall of testifying before the A Board on [332] September 6th and at San Pedro?

A. I remember that.

Q. I am going to read you certain testimony that you gave there. A. All right.

Q. And see if this refreshes your memory on this point. Page 263 of that transcript:

"Q. Mr. Walter, altogether how many fog signals did you hear from the 'Sakito Maru'?"

"A. Well, I don't know. It must have been a good ways off when we heard the first one. Of course, we couldn't see the vessel. I couldn't tell you how many we heard. Probably two or three, I expect at least two before we ever saw the vessel, and I know the last one we heard was just as it was coming in sight and then the next one as it hit the vessel."

Do you recall giving that testimony?

A. According to my memory, that is about right, because we heard one just as it came, or just a few seconds before it came in sight, and then another one I remember just at the time of the collision.

Q. Were all of the signals that you heard from the "Sakito Maru" of the same character?

A. Well, I don't remember. Just the siren at

(Testimony of M. E. Walter.)

first. That last, after the collision, was not like the first one, you know.

Q. But the others were practically the same? [333]

A. Of course, a lot of those boats sound a good deal alike when they are coming in, especially through the fog when you hear those horns.

Q. Could you give us the length of the whistles; was it a long, a short blast, or medium, or what?

A. That I couldn't remember right now.

Q. Will you tell us what your impression was at the time you first saw the "Sakito" with respect to what was it that you saw?

A. Well, of course, I knew there was a boat, you see, as far as that goes.

Q. What was the color of the object?

A. Well, first when you see anything coming through the fog it looks like—if you are looking for anything coming through, it gets darker in one place and then it gradually grows into a form.

Q. Was the object you saw first a dark object?

A. That would be right, I would say. It looks like, just like a fog gets darker in one place and then it gradually comes out. You have seen fog on land.

Q. You were not able at the time you first sighted the "Sakito Maru" to see the outline of her superstructure, that is, her housing?

A. No; I wasn't when I first sighted it, I would say, more or less than it was just a dark object, you see, coming through the fog. [334]

(Testimony of M. E. Walter.)

Q. It was not until the "Sakito" came closer that you were able to see the housing?

A. Well, I would say it came through pretty fast, probably, from the first sight. It wouldn't take a minute until it was in view. In fact, if I remember right, it looked like it just came out of this fog, was more like little clouds are, you see, and it seemed like it just more or less come out of this streak of fog and just came right into view.

Q. How high above the surface of the water was the deck of your boat?

A. Oh, I should judge that where I was standing was about two foot or a little over above the water.

Q. Could you see pretty clearly along the level of the water from your position? Was visibility fairly clear? A. Well, right—

Q. Along the level, I mean? Do you see what I mean? A. Along that level?

Q. Yes. In other words—

A. In other words, do you mean was the fog high or low?

Q. Yes, yes.

A. No, I wouldn't say. I would say the fog was not neither high or low. It was more streaky fog, clouds, if anything. Lots of times—I know what you mean—lots of times it will hang right close to the water, other times it will be up. No; it was not that kind of a fog. In other [335] words I could see the "Rainbow" barge, and when I could see them at all I could see the whole thing clear, see. Earlier in

(Testimony of M. E. Walter.)

the morning there would be times you could just see —I know there was one time there was a streak of fog out there and you could just see the front part of the barge, and then you couldn't see the barge, just the way the fog moved there, and then you could see the fog move over.

Q. Do you know whether at this time that you saw the "Sakito," the "Rainbow" barge was visible to you?

A. I know all three barges were visible to me.

Q. At that time? A. Yes.

Q. At the time you first sighted the "Sakito Maru" how far would you estimate she was from the "Olympic," if you have any estimate or can give us an estimate?

A. Well, now, it would be very little difference between the distance from the "Olympic" to the "Sakito Maru" than it was the distance to our boat in the position we were lying. If anything, it would be just a little further, but, of course, it would be very little further.

Q. I believe you testified—

A. It came in from the south. The "Sakito Maru," if I remember right, came from almost direct south, maybe a little bit east of south of us, and we were practically directly east of the "Olympic," the stern of the "Olympic" barge. [336]

Q. How far astern of the "Olympic" barge were you?

A. Well, now, I don't know. I remember I testified at this trial about a hundred yards or so; but

(Testimony of M. E. Walter.)

since then we have figured out, Bert and I figured afterwards. I told him that I thought we were just about half the distance between the "Olympic" barge and the "Point Loma." We would be just about half that distance astern of it. When you figure it out that way it is pretty hard to say in yards.

Q. You do recall that when you were at the A Board you did testify a hundred yards?

A. I remember I testified a hundred yards, yes; and I remember the next day, after we talked about that, and I decided we were quite some distance further than that.

Q. I believe you testified here today that you saw the "Sakito" apparently turn to port and then a little later apparently turn to her starboard.

A. That is the way it appeared to me.

Q. And then at the time of that second turning she appeared to be about 200 yards distant, is that correct? A. I would say—

Q. That is correct?

A. I would say that it was about the same distance, say 200 yards, two to three hundred yards maybe. It would be about the same distance that we were from the "Olympic," I would say, when it made the turn, and I would say about half of the distance from the "Point Loma" to the "Olympic" [337] would be about where it was when it started to turn, see, when it appeared to me it turned to start with, if I remember right.

Q. It would be about half-way the distance between the "Olympic"—

(Testimony of M. E. Walter.)

A. What the distance was between the "Olympic" and the "Point Loma."

Q. —and the "Point Loma" when you noticed the starboard turn? A. Yes, that is it.

Q. About how far away was it when you noticed her prior to that time turn to the left?

A. When it first came into view, as I say—now, it might have been just my faulty vision, I don't know—but it appeared to me like it was swinging. In other words, when she first came into view it looked like it was headed directly towards, and then as it came in it seemed to turn to the left, see. Now, that may be just the vision. [338]

Q. Did it take you some time after you sighted the "Sakito" before you could get a full visualization of her bow?

A. Well, I could see the bow, oh, I should judge a minute or so after it came into view, a good view of it. In fact, we could read the name on the boat, and, of course, we saw the flags on the boat.

Q. Did you become conscious later of having the masts within your vision?

A. Well, I don't remember the masts. I wasn't looking for masts. We were watching the boat and talking about the speed of it and talking about the direction it was going, more than anything.

Mr. Adams: I believe that is all.

Mr. Cluff: I have no further questions.

The Court: That is all.

Mr. Cluff: Call Mr. Ohiser. [339]

LOUIS R. OHISER,
called as a witness on behalf of libelant, being first
duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. Louis R. Ohiser.

Direct Examination

Q. By Mr. Cluff: Mr. Ohiser, you were the
night watchman on the "Olympic"?

A. I was.

Q. How long prior to the collision had you been
working on that "Olympic"?

A. I went on board August the 5th, 1940.

Q. Now, the night before the collision you were
on duty as watchman at night?

A. I was.

Q. Getting down to within a half hour before the
collision—by the way, what time did you have your
breakfast? A. Oh, about 6:30.

Q. About 6:30? A. About.

Q. After you finished your breakfast where did
you go? A. Back out to the bell.

Q. How long did you remain there?

A. Until the accident.

Q. How is that? [340]

A. Until the accident.

Q. Until the accident. Were you ringing the bell
during that time? A. I was.

Q. Tell the Court how.

A. Well, I had a hold of the rope to the clapper
and ringing so many rings a—

(Testimony of Louis R. Ohiser.)

Q. It is a bigger bell than this, Mr. Ohiser?

A. Yes, sir.

Q. Show the Court how you were ringing the peals?

Mr. Adams: Are you going to ask me to time this, Mr. Cluff?

Mr. Cluff: What is that? Will you? I forgot about that again. I keep forgetting we haven't got an automatic timer here.

Q. All right, Mr. Ohiser. Wait until I check this a little. All right. All ready, Mr. Adams? Go ahead. A. (Witness ringing bell.)

Q. I notice you made a little pause. What time did you get, Mr. Adams?

Mr. Adams: Four seconds.

Q. By Mr. Cluff: I noticed you made a little pause there, Mr. Ohiser, between the last two strokes.

Mr. Montgomery: I got it five seconds, myself.

Mr. Adams: Let the record show that I am returning Mr. Cluff's watch. [341]

Mr. Cluff: That is important. I lost the question, Mr. Bargion. Have you got it there?

(Question read by the reporter.)

Q. ——was that pause intentional?

A. Yes, sir. That was to give the two little short ones to indicate the "Olympic" barge.

Q. What was the purpose? Did the other barges have distinctive signals too?

A. Yes, sir. The "Rainbow" had one short, towards our left.

(Testimony of Louis R. Ohiser.)

Q. How about the "Point Loma"?

A. It was the "Point Loma" had the one signal.
The "Rainbow" had none.

Q. The "Rainbow" just rang all peals?

A. Yes, sir.

Q. About how often and at what intervals did you ring those peals? A. We continued on.

Q. That is, you rang in rotation with the other three barges? A. Yes, sir.

Q. Could you hear the diaphone on the breakwater from that position where the barge was anchored? A. Whenever it was blowing.

Q. Could you hear it that morning?

A. Earlier, yes. [342]

Q. Can you give us some idea about how often in reference to the sound of that diaphone the three barges were ringing their peals?

A. I never paid much attention to it. I heard the noise.

Q. When you were there ringing the bell did you hear any sound signals from other vessels?

A. I heard one.

Q. Where did that appear to come from?

A. It seemed to appear from the south.

Q. And how long was that before the collision?

A. Oh, that was around twenty minutes or so.

Q. Before the collision?

A. Around twenty minutes or so.

Q. During the twenty minutes before the collision how many whistles did you hear?

(Testimony of Louis E. Ohiser.)

A. Well, it sounded to me like one long and a couple of shorts.

Mr. Cluff: Mr. Adams, will you suppose that signal means tug in tow?

Mr. Adams: You mean one long and—

Mr. Cluff: I guess we don't need a supposition. It is in the rules. One long and two shorts means tug in tow.

Mr. Montgomery: What?

Mr. Cluff: One long and two short whistles means tug in tow under the International Rules.

The Court: I didn't get it. [343]

Mr. Cluff: I say, I asked Mr. Adams to agree that one long and two short whistles means a tug in tow. It is a fog whistle of a vessel with a tug in tow, rather than a free vessel.

Q. Did you hear any other signals?

A. No.

Mr. Adams: What was the answer?

Mr. Cluff: Don't shake your head, Mr. Ohiser. Just speak so that the reporter and everybody here can hear you. A. No; I heard no more.

Q. Did you later see the "Sakim Maru"?

A. I did.

Q. From what direction did she appear to you?

A. From the south.

Q. From the south? A. Yes, sir.

Q. How did she bear with reference to the "Olympic", the "Olympic's" port side?

A. Well, she was going the same direction as the barge was headed.

(Testimony of Louis R. Ohiser.)

Q. In absolutely the same direction?

A. Practically.

Q. In other words, absolutely parallel?

A. That is what it seemed to me.

Q. Do you remember, Mr. Ohiser, that when you gave your deposition you made a drawing here showing the three barges, [344] the "Olympic", the "Point Loma" and the "Rainbow"?

A. Yes, sir.

Q. Then you drew various other figures showing the position of the "Sakito Maru" at various times?

A. Yes, sir.

Q. Now, the position you have marked here "Sakito 1"— A. Yes, sir.

Q. —is the position about when you first saw her? A. Yes.

Mr. Cluff: I will just offer that deposition, already marked, I think, as—no, it is marked with a "W", I think, just the notary's name, but let us take that as the "Olympic's" next exhibit. That will be what?

The Clerk: That will be 7.

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(Testimony of Louis R. Ohiser.)

Q. By Mr. Cluff: After you saw the ship in that position did you have any apprehension that there was going to be a collision?

A. Not at that time; no, sir.

Q. What did you do with respect to the bells?

A. I continued the regular bell.

Q. Continued the regular peal.

Q. By the Court: What was the interval between the ringing of the bells on your boat?

A. Well, it was about rung five seconds every minute.

Q. What?

A. About five seconds every minute. [345]

Q. Did you have any way of timing it, or just your estimate? A. Just an estimate.

Q. By Mr. Cluff: You continued to watch this boat approaching? A. I did.

Q. Could you see passengers along the rail, the port side? A. Of which?

Q. Of the "Olympic"?

A. I never paid no attention to any of the passengers at all.

Q. You never paid any attention; you were watching the ship?

A. I was watching the ship.

Q. How far away was the "Sakito" at the time you first saw her in that position—

A. It seemed to me about five or six lengths.

Q. Five or six lengths of the barge or about five or six lengths of the "Sakito"?

A. Of the "Sakito's" lengths.

(Testimony of Louis R. Ohiser.)

Q. Now, she continued to approach on that course for some time?

A. For a little short time; yes, sir.

Q. Then what happened?

A. She turned hard right, it seemed to me to hard right. [346]

Q. She turned hard right. How far away was she when she turned to the right?

A. Around about five lengths.

Q. After that what did you do?

A. I rang the bell continually, all the time.

Q. And for how long? A. Until she hit.

Q. After she turned to the right and headed—how was she headed then after she completed this turn? A. Headed straight for us.

Q. Straight for you? A. Yes, sir.

Q. Did she change course again?

A. I didn't see no change.

Q. You continued ringing this bell?

A. I did.

Q. Continuously until the collision?

A. I did.

Q. How far was it from you when the ship struck?

A. How far I was from the ship?

Q. How far were you from the point where the "Sakito" struck?

A. Oh, I think it must have been around between ten and fifteen feet.

Q. Did you leave the bell before the impact?

(Testimony of Louis R. Ohiser.)

A. Just as it hit. [347]

Q. Just as it hit? A. I did.

Q. You left the bell and went where?

A. I jumped around the corner of the little house.

Q. The port side? A. Yes, sir.

Q. While you were there in a position to—or just a minute. After the ship turned right, as it was coming toward you, you were able to see the bow of the "Sakito"? A. I was.

Q. The forecastle head? Did you see any man standing up there, showing waist high above the bulwarks? A. I saw none.

Q. Did you look for anybody up there?

A. I did.

Q. And you didn't see anybody?

A. I could see nobody.

Q. After you were struck how far into the barge did she go?

A. Well, she went over half way.

Q. She went over half way? A. Yes, sir.

Q. That is, beyond the keel? A. Yes, sir.

Q. By the way, before the impact did you see Jack Greenwood, the barge keeper? [348]

A. He come around there when I was ringing the bell continuous and he saw me and he told me to keep on and I kept on.

Q. And then he went somewhere else?

A. He went some place; yes.

Q. At the time the "Sakito" struck and went into the barge did you see anybody on the "Sakito"?

(Testimony of Louis R. Ohiser.)

A. I saw no one—well, yes; one man came up from what you call the well deck.

Q. Came up from the well deck? A. Yes.

Q. Onto the forecastle head?

A. Looked over the corner.

Q. Do you remember whether he had a uniform cap on? A. No.

Q. You say he didn't or you don't remember?

A. I don't remember seeing any uniform.

Q. I can't tell what you mean when you shake your head. A. I saw no uniform on him.

Q. Did you have any conversation with him?

A. Yes, sir.

Q. What went on?

A. I hollered to him to lower a rope and also lower a life boat.

Q. What did he say, if anything?

A. No answer at all.

Q. None. What did he do? [349]

A. He didn't do nothing, just looked down at me.

Q. The "Sakito", at the time you had the conversation with this fellow, was she still fast in the hole? A. Yes, sir.

Q. Could you see any separation at all?

A. Not at that time.

Q. After that what did you do, after shouting up to the fellow?

A. I went around to the other side and I saw Mr. Greenwood throwing down life preservers.

Q. He was then where, on top of the house?

(Testimony of Louis R. Ohiser.)

A. On top of the house.

Q. That is where you kept your life preservers, up on top of the cafe? A. Yes, sir.

Q. And he was throwing down life preservers?

A. Yes, sir.

Q. Anybody with him? A. No, sir.

Q. Did you see Culp, the bake boy?

A. No, sir; not at that time.

Q. What did you do after seeing him there?

A. I got up on top.

Q. What is that?

A. I got up on top and helped him.

Q. Did you also throw down life preservers?

[350]

A. I did.

Q. Did you see that everybody that remained on the barge had life preservers? A. I did.

Q. Did you see the "Lillian L" at that time?

A. I did.

Q. Where was she?

A. Alongside, loading people as fast as she could.

Q. Was the "Lillian L" alongside after the collision?

A. Well, she was a trifle ways away from us.

Q. Were the people still getting aboard?

A. I couldn't say.

Q. When you say "loading people as fast as she could", were you referring then to the "Lillian L" or to the "H-10"? A. To the "Lillian L".

Q. Did you see anybody get aboard the "Lillian L" at any time?

(Testimony of Louis R. Ohiser.)

A. I saw one man jump aboard.

Q. Jump aboard?

A. Yes. And then I turned my head after that and continued on with the life preservers.

Q. After you got up on top and served out these life preservers did you pay any further attention to the "Sakito"? A. No.

Q. Did you see her pull out?

A. Not until I was coming down the steps. [351]

Q. When you were coming down the steps, that is, from up on top of the house?

A. She had started pulling away then.

Q. She had started pulling away then?

A. Yes.

Q. Then after you came down the steps what did you do?

A. I was wading in water then and went around where the bunch were waiting to get onto the boats.

Q. Was there water on the deck at that time?

A. Yes, sir; it was rushing in.

Q. Rushing in from where?

A. From where the "Sakito Maru" was there into the boat. She was starting to pull off and it came all over.

Q. You mean the water was rushing on the deck or onto the hold? A. Onto the deck.

Q. Onto the deck. Where was it coming from, from the sea or coming out of the hold?

A. Out of the hold.

Q. Then what did you do after that?

(Testimony of Louis R. Ohiser.)

A. I went over to the rest of the people there and stood with them and tried to get them aboard the water taxi.

Q. The "H-10" had come alongside in the meantime? A. Yes, sir.

Q. Did you get onto the "H-10"?

A. I did a little later; yes, sir. [352]

Q. As you went onto the "H-10" you were helping people aboard? A. I was.

Q. Did you see Jack Greenwood and Culp at that time? A. I did.

Q. What were they doing?

A. Standing back, pushing people toward the stern, keeping them from going back the other way.

Q. Did they continue to do that until the ship went down? A. Yes, sir.

Q. So far as you know, they went down with her?

A. They did.

Q. Did you see them on board as she went down?

A. Yes, sir.

Q. Did you actually see the ship go down or were you engaged in something else? A. I did.

Q. What is that? A. I did.

Q. Were you the one who helped Miss Karsh who was on the stand this morning? A. I was.

Q. Helped her out of the water? A. Yes, sir.

Q. And then following, as you helped her up—when with reference to the time you helped her aboard did the "Olympic" [353] go down?

The Court: Isn't that cumulative?

(Testimony of Louis R. Ohiser.)

Mr. Cluff: Possibly so. All right, I think that is all, Mr. Ohiser. Oh, just one question Judge Montgomery suggests.

Q. You have seaman's papers? A. I have.

Q. Been to sea a number of voyages?

A. Yes, sir.

Q. Both coastwise and voyages at sea?

A. Yes, sir.

Q. Ordinary seaman's papers, also wiper and messman? A. That is right.

Q. As the "Sakito Maru" approached, how fast was she coming?

Mr. Adams: Objected to on the grounds it calls for a conclusion of the witness, no proper foundation laid.

The Court: Objection overruled.

A. It seemed to be coming pretty fast.

Q. By Mr. Cluff: Well, have you got any idea in miles per hour, knots per hour?

A. No; I haven't.

Mr. Cluff: All right; that is all.

Mr. Adams: Well, I move the previous answer be stricken as unintelligible, what this witness considers "pretty fast."

The Court: It speaks for itself. "Pretty fast" doesn't mean anything. [354]

Mr. Adams: Just so long as that is understood it doesn't mean anything I have no objection. If the Court please, if I might have five minutes I think I could expedite the cross examination of this witness and save time by so doing.

(Testimony of Louis R. Ohiser.)

The Court: You mean a five-minute recess at this time?

Mr. Adams: Yes.

The Court: If it will expedite matters more than five minutes I am willing to give it to you. Is that a promise or a threat?

Mr. Adams: Well, I will guarantee it will expedite it more than five minutes.

The Court: All right. Recess for five minutes, then.

(Short recess.)

Cross-Examination

Q. By Mr. Adams: Mr. Ohiser, if I understand your testimony correctly, you were employed aboard the barge "Olympic" for the first time on August 5th? A. Yes, sir.

Q. And you were employed as a watchman, is that correct? A. That is correct.

Q. Had you ever been aboard that barge prior to that date? A. No, sir.

Q. Had you ever been out on Horseshoe Kelp prior to that date? [355] A. No, sir.

Q. During the time that you were aboard the barge after August 5th up until September 4th had you frequently observed vessels, merchant vessels passing the barge "Olympic"?

A. Well, whenever I happened to be looking that way, seeing them.

Q. You saw them on occasions, did you?

A. I did.

(Testimony of Louis R. Ohiser.)

Q. Passing on both sides of the barge?

A. Well, mostly on the right, towards the stern of the boats, most of them.

Q. Toward the stern of the "Olympic"?

A. Yes, sir. [356]

Q. You saw some merchant vessels go between the "Olympic" and the "Rainbow", did you not?

A. I think I saw one.

Q. Only one?

A. Practically. There might have been more but I didn't see them.

Q. You saw vessels passing the barges in close proximity, going in both directions, did you not?

A. I may have.

Q. Your duties were performed during what hours?

A. Oh, about 4 o'clock in the evening until 6 in the morning.

Q. And then did you continue remaining aboard the barge during the daytime?

A. Well, yes, except the days I went—about twice a week I went in town.

Q. You slept mostly during the daytime, I take it? A. Yes, sir.

Q. You do not have a lifeboat certificate, do you? A. No, sir.

Q. And did not have at that time, at the time of the collision?

A. I had none at any time.

Q. You are short-sighted, are you not?

(Testimony of Louis R. Ohiser.)

A. Well, I got astigmatism. I can't see anything up close to me without glasses. [357]

Q. You customarily wear glasses, don't you?

A. Yes, sir.

Q. And those glasses are to correct a condition of short-sightedness, are they not? A. Yes, sir.

Mr. Cluff: Just a moment. That calls for a conclusion of the witness. I don't believe I could testify what I wear glasses for. I know I have got to wear them.

Mr. Adams: That suggests a point which I have in mind. I would like at this time to request the court for an order directing an examination of Mr. Ohiser's sight.

Mr. Cluff: You don't need an order. I was asking him about that. You can have the examination by any oculist you like.

Mr. Adams: All right.

Mr. Cluff: But what is the materiality of it, though?

Mr. Adams: I should think the eyesight of a lookout would be quite material.

Mr. Cluff: The eyesight of the lookout did not cause the collision between the "Sakito Maru" and the "Olympic".

The Court: If Mr. Ohiser wants to submit to an examination and you want to pay the bill, it is satisfactory. I am still rather inclined to feel that, and I thought as I read the pre-trial brief, just what would be the function of a lookout on an anchored

(Testimony of Louis R. Ohiser.)

boat? What could he do if he saw something coming? [358]

Mr. Adams: Well, he could certainly have taken some precautions, even outside of the rules and regulations, if the court please, if you saw a vessel approaching.

The Court: How could he have avoided it?

Mr. Adams: Well, he could have sounded some warning. He could have sounded his bell long before. He didn't even hear the whistles of the "Sakito". He could have sounded his bell continuously and sounded it hard, as he did when he saw her turn hard right if he had heard the whistles or if he had seen her sooner than he did, or if he had seen her accurately.

The Court: It may have some influence upon some other court. You can have the examination if you want it and get it into the record.

Q. By Mr. Adams: Let me ask you, Mr. Ohiser, on that point: You were not wearing your glasses as you were standing lookout that morning, were you? A. No, sir.

Q. By the Court: Do you have any trouble with your vision at a distance? A. No, sir.

Mr. Adams. What was the question and answer, please?

(Record read by the reporter as requested.)

Q. Do you mean, Mr. Ohiser, that you can see at a distance as well without your glasses as you can with your glasses? [359] A. Yes, sir.

(Testimony of Louis R. Ohiser.)

Q. Have you had your eyes tested and that result has been expressed to you by an oculist?

A. Yes, sir.

Q. What is the purpose of your glasses? What do the oculists tell you that you have to wear them for? A. Astigmatism.

Q. I thought you testified that it was for short-sightedness?

A. Well, it is short-sightedness, too. I think they call it both. I don't know.

Q. By Mr. Cluff: Mr. Ohiser, you are willing to go to an oculist at any time, at Mr. Adams' convenience, this afternoon if he wants?

A. Absolutely.

Mr. Adams: We will take that up later.

Q. Mr. Ohiser, what was the condition of the weather between 6:30 and 7 o'clock the morning of September 4, 1940? A. Foggy, off and on.

Q. And what was the distance of visibility during that period of time?

A. Well, I could see, off and on, the side of the "Rainbow".

Q. When did you sound your fog bell?

A. What do you mean?

Q. What regulated the sounding of your fog bell, [360] visibility? A. The fog.

Q. Fog? A. Yes, sir.

Q. Did you act on your own initiative in determining whether the fog was dense enough to cause you to sound the fog bell?

(Testimony of Louis R. Ohiser.)

A. When I couldn't see the other boats I knew it was time to ring the bell continuously.

Q. Did you ever ring the bell independently of any of the other barges, acting on your own initiative that morning? A. Not that morning, no.

Q. As a matter of fact, you only rang your bell when you heard the other barges ringing theirs, isn't that correct?

A. Because I knew the fog was coming from the shore.

Q. Will you answer the question? You only rang your bell when you heard the other bells precede you and ring theirs, isn't that correct?

A. Yes, sir.

Q. You did not on your own initiative ring your fog bell when the other barges were not ringing their bells? A. No, sir.

Q. As long as the barge "Rainbow" was visible from the "Olympic" were *there* bells being sounded by the other [361] barges? A. Yes, sir.

Q. Even though the "Rainbow" was visible to any person aboard the "Olympic", and even though the "Olympic" might therefore have been visible to anyone aboard the "Rainbow", the barges were still sounding their bells, is that correct?

A. That is right. When it got a little bit thicker I sounded mine.

Q. What do you mean by that, "When it got a little bit thicker?"

A. When it got a little bit hazier, where I could

(Testimony of Louis R. Ohiser.)

just barely make the outline, when it was coming thicker towards me.

Q. Were there times when the "Rainbow" sounded its bell and you did not sound your bell?

A. Oh, at times; yes.

Q. What was the condition of the fog at those times? A. Well, kind of light.

Q. In what direction?

A. Well, towards the shoreline, the breakwater.

Mr. Cluff: May I interrupt a moment, Mr. Adams? Will you fix the time when you are directing your examination to? It seems to me very indefinite.

Mr. Adams: The witness had indicated that there were times when the "Rainbow" did not sound its bell and he sounded his, and I referred to the times when the "Rainbow" [362] sounded its bell when he did not sound his.

The Court: What difference does it make what they did on other times? Aren't we only interested in the sounding of the bells at the time of the collision?

Mr. Adams: Yes, if the court please, but the ringing of bells in just one minute before the collision and—

The Court: Are you talking about that morning or are you talking about some other morning?

Mr. Adams: I am talking about this morning; yes.

The Court: All right. As long as you are talking about that morning it is all right.

(Testimony of Louis R. Ohiser.)

Q. By Mr. Adams: As a matter of fact, there was only one other occasion when you ever had any fog since you have been employed on the "Olympic" out there, on August 5th, isn't that true?

A. Yes, sir.

Q. This is really the first occasion you have ever had any really foggy weather since you were employed on August 5th, isn't that correct?

A. The second.

Q. The first occasion was a very light fog that cleared up very quickly, isn't that true?

A. Yes, sir.

Q. Directing your attention to the morning of September 4th, particularly to the interval of time between 6:30 and 7:10 a. m., was there ever any time during that period that [363] the bell was being sounded on the barge "Rainbow" and you were not sounding your bell aboard the barge "Olympic"?

A. No. I was ringing mine at the regular times.

Q. Was there any occasion during that period of time when you were sounding your bell aboard the barge "Olympic" and the "Rainbow" was not sounding its bell?

A. Well, when I was ringing the rest of them didn't ring because it would confuse the other boats coming around.

Mr. Adams: Would the reporter read that answer, please?

(Answer read by the reporter.)

Q. When you rang your bell the other barges did not ring their bells? A. No.

(Testimony of Louis R. Ohiser.)

Q. You mean they just discontinued for a certain interval of time the ringing of their bells?

A. Until I stopped and then another one started.

The Court: What is that? What is that answer?

(Answer read by the reporter.)

Q. By the Court: In other words, they were ringing in rotation? A. Yes, sir.

Q. By Mr. Adams: Now, Mr. Ohiser, during that interval of time between 6:30 and 7:10 o'clock a. m., September 4th, you testified that the fog was intermittent; it varied, did it not, during that interval?

A. Yes, sir. [364]

Q. Sometimes it would be dense and sometimes it would lighten up, is that correct?

A. That is right.

Q. And during the periods or the occasions that it would lighten up did the barges discontinue ringing their bells at regular intervals?

A. Well, a couple of times.

Q. A couple of times between 6:30 and 7:10 o'clock they discontinued ringing their bells, is that it? A. 10 o'clock did you say?

Q. Between 6:30 a. m. and 7:10 a. m. there were a couple of times during that period of time that they discontinued ringing their bells in rotation, is that correct?

A. Just about a few minutes we didn't ring.

Q. Can you indicate when those two occasions occurred between those two periods of time, or those

(Testimony of Louis R. Ohiser.)

two points of time; was it near 7 o'clock when you discontinued ringing the bells?

A. I couldn't say. I did not look at my watch.

Q. Do you have any recollection about how long it was on each of these two occasions that the barges discontinued ringing the bell?

A. I did not look at my watch to keep track of the time at all.

Q. Do you consider that you are able to gauge time rather accurately without looking at a watch? [365] A. Oh, sometimes.

Q. Were you able at that time to gauge it accurately? A. Oh, a little bit.

Q. Can you give us your best estimate, based on your ability to gauge time, as to how long it was during each of those two occasions that the bells were discontinued?

A. Oh, I couldn't do that now.

Q. Just how are you able to estimate that the bells were sounded, when they were sounded, at regular minute intervals if you are not able to give that estimate?

Mr. Montgomery: I object to the question as argumentative.

Q. By Mr. Adams: Upon what do you base your estimate that the bells were being sounded in rotation at regular minute intervals?

A. Well, just by guesswork.

Q. And that is by the same guesswork that you just spoke of? A. Just about.

(Testimony of Louis R. Ohiser.)

Q. Do you recall how long before the collision it was that this second occasion occurred that you discontinued ringing the bells aboard the three barges?

A. I couldn't say because I didn't look at my watch.

Q. Might it have been somewhere around 7 o'clock? A. It might have been.

Q. Might it have been somewhere around 7:05 a. m.? [366]

A. No; because I was ringing it continuously.

Q. You were ringing continuously from 7:05 a. m.? A. Yes.

Q. Well, I thought you were not ringing continuously until you saw the "Sakito Maru" turn sharply to the right. A. That is right.

Q. Do you say now that the "Sakito Maru" turned sharply to the right at directly 7:05 a. m.?

A. I couldn't say what the time was because I did not look at my watch at the time she turned.

Q. Then, might one of these occasions when you discontinued ringing the bells have been around 7:05 a. m.?

A. I couldn't say. I didn't look at my watch. My watch stayed in my pocket all the time.

Q. By the Court: Do you recall as to whether it was close to the time of the impact or not?

A. Everything was so quick and my mind was on the boat all the time, and wasn't on my watch to look at the time.

(Testimony of Louis R. Ohiser.)

Q. Well, you say you discontinued ringing the bell for a while. You can't give us any idea, then, how close it was to the time of the impact?

A. Well, it was a little bit before, about, oh, it must have been, oh, five minutes or so before, something like that, it might have been.

Q. You don't know? A. Not exactly. [367]

Q. You don't know when it was?

A. What do you mean?

Q. You don't know whether it was 7 o'clock or 7:05 or five minutes to 7 or seven minutes after 7?

A. I didn't look at my watch at all.

The Court: You don't know. All right.

Q. By Mr. Adams: When was it that you commenced ringing your bell continuously?

A. As soon as I saw the ship made the hard right turn.

Q. You did not start ringing it continuously when you first saw the "Sakito Maru"?

A. Well, we was ringing it at intervals, the same, in rotation.

Q. You did not start ringing it continuously when you first heard a whistle from the "Sakito Maru"?

A. No; I was just ringing intervals.

Q. Do you recall testifying before the C. Board on the day of the collision, September 4, 1940, at San Pedro? A. I do.

Q. Do you recall being asked this question and giving this answer:

(Testimony of Louis R. Ohiser.)

"Q. How long before the collision did you say you heard the whistle?

"A. 20 minutes or better, because I heard it away off before I could even see the boat, and kept ringing the bell continuously." [368]

Do you recall giving that testimony?

A. I think I do.

Q. How long before the impact did you see the "Sakito Maru"?

A. Well, I think it must have been about 10 to 20 minutes when I first saw it.

Q. You saw the "Sakito Maru" 10 to 20 minutes?

A. Somewheres in between.

Q. Before the impact?

A. Somewheres in between.

Q. Somewhere between 10 and 20 minutes?

Q. By the Court: Did you cease ringing the bell at any time after you saw the "Sakito Maru"?

A. I was ringing it at the regular intervals when it is foggy.

Q. During all that time that she was in your sight?

A. Well, I kept watching it all the time.

Q. I know, but the question is: Did you continue to ring the bell at all times after you saw the "Sakito Maru"?

A. At just the intervals it was.

Q. I know, at the intervals of rotation?

A. Of rotation; yes, sir.

Q. Then, during that period did you have any of these intermittents where you did not ring it?

(Testimony of Louis R. Ohiser.)

A. I don't think there was, because my mind was mostly on the boat, whether it was going to make a turn or whether [369] it was going to go straight, but I kept my hand on the bell at the same time.

Q. I know, but you have testified at least two different times that during the 40 minutes before the collision, that you ceased ringing the bell, that three of the boats ceased ringing the fog bell; but you don't know what part of that 40 minutes you ceased ringing?

A. No; I couldn't tell you what time.

Q. You say that this "Sakito Maru" was in your vision from 10 to 20 minutes?

A. Something like that.

Q. But what I am trying to ascertain is whether any time there, whether it was 10 minutes or 20 minutes, did you at any time during that period let up ringing your bell at intervals?

A. I wasn't sure exactly. I think I did. My mind was practically set on that ship, whether she was going to turn right or going beyond us.

Q. And at that time it was within your vision?

A. Yes, sir. I could see those two flags.

The Court: All right.

Q. By Mr. Adams: Do I understand you to testify, Mr. Ohiser, that after you had first sighted the "Sakito Maru" there was one occasion when you think you discontinued ringing the bell because your mind was focused on the "Sakito"? [370]

A. I might have been.

(Testimony of Louis R. Ohiser.)

Mr. Cluff: What was the answer, please?

(Answer read by the reporter.)

The Court: It doesn't mean very much one way or the other.

Q. By Mr. Adams: Now, you say that you sighted the "Sakito Maru" either 10 or 20 minutes before the collision. How far distant was the "Sakito Maru" from the "Olympic" when you first sighted the "Sakito"?

A. It seemed to me about five or six lengths of the "Sakito Maru".

Q. About five to six lengths? A. Yes, sir.

Q. It is your testimony, is it, that it took the "Sakito Maru" either 10 to 20 minutes to travel the five to six lengths?

A. I couldn't say. It might have been.

Q. Do you recall having testified before the coroner's inquest on September 6, 1940 at San Pedro?

A. I remember testifying something there.

Q. Do you recall being asked this question, or these questions, and giving these answers:

"Q. How close was it to the barge when you actually saw an outline of the prow of the ship? That is what you first saw, wasn't it?

"A. Yes. I saw a big black thing there about, oh, I [371] guess it would be five or six hundred yards or better, saw a big black thing in the fog.

"Q. Five or six hundred yards?

"A. Yes; better than that.

(Testimony of Louis R. Ohiser.)

“Q. Well, that is pretty near a half a mile.

“A. Yes, sir. And then it got kind of foggy and I kept ringing the bell more and more, and then that big black thing hit me in the face.

“Q. You rang it harder and harder?

“A. Yes, sir; continuously ringing it.”

Do you recall giving that testimony before the coroner's inquest? A. I do. [372]

Q. Do you wish to correct your testimony, Mr. Ohiser, as to the distance the “Sakito Maru” was away from the “Olympic” at the time you first sighted her?

A. That's the way it looked to me.

Q. How did it look to you?

A. Between five to six lengths away.

Q. Between five to six lengths away?

A. Yes.

Q. Did she also look to you like she might have been five or six hundred yards away?

A. I couldn't say; I didn't pay much attention about the yards.

Q. You recall having testified before the coroner's inquest that she looked like she was five or six hundred yards? A. Yes.

The Court: He has admitted that; we don't care to have any argument about it.

Q. By Mr. Adams: Now, Mr. Ohiser, you claim to have heard the propellers of the “Sakito Maru” before you sighted the “Sakito,” do you not?

A. Before I sighted—

Q. Before you sighted the “Sakito Maru”?

(Testimony of Louis R. Ohiser.)

A. I heard some kind of noise; I don't know exactly what it was. I thought it might have been the propellers, or something. [373]

Q. What was that noise?

A. I couldn't exactly say.

Q. What did it seem like?

A. It seemed liked propellers going.

Q. About how long prior to the collision was it that you heard that?

A. Not very long, I don't think.

Q. Can you give us an estimate?

A. No, I couldn't.

Q. Referring to your testimony before the same coroner's inquest, do you recall being asked this question, and giving these answers—page 21—

The Court: Counsel, aren't you attempting to impeach your witness on the questions you asked him yourself? There was nothing brought out on this on direct examination.

Mr. Adams: If the court please, I am endeavoring to show the inconsistency of this man's statement. I thought on cross examination I was entitled to show how inconsistent he was.

The Court: You asked the question; you brought it out yourself on cross examination.

Mr. Adams: This was not my witness, if the court please.

The Court: You have gone into matters that weren't even touched on in direct examination.

Mr. Adams: They are within the scope of the direct exam- [374] ination.

(Testimony of Louis R. Ohiser.)

The Court: All right. Proceed.

"Q. You did that as a warning, although you saw no vessel near?

"A. I heard the vessel about 20 minutes before they hit us; I heard the vessel."

Do you recall giving that testimony?

A. I do.

Mr. Montgomery: I object to that as not a proper method of cross examination.

The Court: I am going to admit it. I will stay until six o'clock until he finishes. I can stand it if the rest of you can.

Mr. Montgomery: As I understand it, the proper question is whether or not he so testified; not whether he remembers that he so testified.

Mr. Adams: Let me ask you that. Thank you, Judge Montgomery.

The Court: You have asked the question. I will hold you down to it. I have told you to go ahead.

Q. By Mr. Adams: Do you recall, Mr. Ohiser, that at the time your deposition was taken, on February 14, 1941, you testified in the manner in which I will read to you, on page 31:

"Q. Just a minute. You are getting ahead of your story. What was the next unusual thing that you saw or heard [375] after you heard these whistles at 20 minutes of 7:00?

"A. I heard the sound of a boat.

"Q. You heard the sound of a boat?

"A. Yes.

"Q. Will you be a little more explicit there?

(Testimony of Louis R. Ohiser.)

What did you hear that told you it was the sound of a boat?

"A. I guess you would call it the water which the propeller gives. I guess that would be the sound you would hear.

"Q. Just describe the sound. Was it a swishing sound, a chugging sound, or what sort of a sound?

"A. Just the sound of the propeller in the water. I don't know how you would describe it, but that's what it would sound like.

"Q. About what time did you hear that sound?

"A. I never looked at my watch, only I just guess at it.

"Q. The best you can.

"A. About 10 minutes of 7:00.

"Q. How long before the collision, with reference to the collision?

"A. I don't know exactly the time of the collision. It was around 7:00 or after.

"Q. A little after 7:00?

"A. Yes.

"Q. About how long before the collision, according to your best recollection? [376]

"A. Between 10 and 15 minutes.

"Q. Between 10 and 15 minutes.

"A. Yes, as near as I can say."

Do you recall having testified in that manner, Mr. Ohiser? A. I do.

Q. I believe you testified here, in answer to Mr.

(Testimony of Louis R. Ohiser.)

Cluff's questions, that when the "Sakito" seemed to turn hard to its right she was about five lengths away from the "Olympic," is that correct?

A. It is.

Q. How long was that before the actual impact?

A. Well, I just guess at it; at the time it seemed to be about—

The Court: I don't want any guesses as to the time. We have had enough guesses. If you don't know, say so; if you can't make a reasonable estimate, I don't want to hear it.

A. Everything happened so quick, I wouldn't know.

Q. By Mr. Adams: Did you testify in the manner in which I will read to you, at the time of the coroner's inquest, the same coroner's inquest that I previously indicated, on page 27:

"Q. How far was the vessel from the barge at the time it made this hard right turn?

"A. I couldn't tell you exactly. I know it was plenty [377] of time to miss the boat if they had made a hard left.

"Q. Can you approximate the distance in yards from the barge at the time it made the turn?

"A. Well, I can't, better than about two lengths of that boat, and the boat was approximately a block long or better.

"Q. About 300 feet?

"A. Something like that, yes, when I saw it turn."

(Testimony of Louis R. Ohiser.)

Did you so testify? A. I did.

Q. Referring to your testimony before the A Board, on September 6, 1940, will you kindly indicate, after I read this, whether you testified in the manner which I will read, before that body.

Mr. Cluff: Mr. Adams, I offer to stipulate that you may consider in evidence his A Board testimony and B Board testimony.

The Court: The court does not care to take up the time to read that testimony.

Mr. Adams: Page 245:

“Q. About how far distant from your barge was the ‘Sakito Maru’ when its heading was in the direction which you have indicated by diagram No. 2”—

Now, at this stage, I am going to ask the witness if this was an exhibit drawn by him before the A Board.

Do you recognize this diagram as one drawn by you at the [378] A Board hearing, September 6, 1940? A. Yes, sir.

Q. Is that your signature on there?

A. That’s my signature.

Mr. Adams: I will offer this in evidence, and ask leave to have a photostatic copy made, inasmuch as I am directed by Miss Esther Phillips to return this to her custody, if there is no objection.

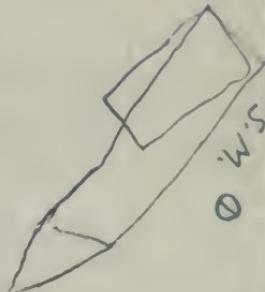
The Court: There will be no objection.

The Clerk: “Sakito’s” Exhibit D.

Exhibit 6

Docket No. _____ Commission's Exhibit No. 6
In the matter of: BARGE Olympic II
Date 9/6/40 witness CHISER Report by J. Snyder

No. 1138-1547 atm
vs.
Astite EXHIBIT
No. D
Filed SEP 17 1940
R. S. ZIMMERMAN, Clerk
By M.W. Deputy Clerk





(Testimony of Louis R. Ohiser.)

The Court: I would like to have the witness, as long as you have introduced that, explain this diagram, so the court will understand it.

Mr. Adams: I will be glad to read the portion of the A Board transcript—

The Court: I want the witness to explain it to me.

Q. By Mr. Adams: Mr. Ohiser, I show you this diagram, which is now marked "Sakito's" Exhibit D, and will you kindly explain what the various symbols shown on that diagram indicate?

A. This is the boat, the "Olympic."

Q. You are referring now to the object which appears just above your name? A. Yes.

Q. What is the object just above the "Olympic"?

A. The "Sakito Maru." [379]

Q. At what stage?

A. Coming directly for us.

Q. Was that at the time she made this right turn?

A. That's where it was, at that time. I was pretty well shaken up at that time. I did not know exactly what I was doing, after the accident.

Q. What does the object which is marked "SM-1" indicate? A. "Sakito Maru."

The Court: In other words, these two objects represent the two positions the boat was in?

A. Yes. I was pretty well shaken at that time, after the collision.

Q. By Mr. Adams: You say "SM No. 1" represents the "Sakito Maru." It represents it at the time you first saw it, isn't that correct?

(Testimony of Louis R. Ohiser.)

A. That's right, at the A Board.

Q. I would like to refer to this other diagram. I refer to the other exhibit, No. 7. Were you fully composed when you directed the drawing of that diagram by the use of the models?

A. I was in better shape.

Q. There was nothing, was there, about your condition that would have led to your being confused in having the models placed on the diagram and placed as you directed at that time? [380]

A. Very little.

Q. Referring to "Olympic No. 7," the position of the "Sakito Maru" indicates the position that you testified to at the time of your deposition, and represents the "Sakito" when you first sighted her, is that correct? A. Yes.

Q. And "Sakito No. 2" indicates the position of the "Sakito," as you testified to it at that time, after she had made the right turn? A. Yes, sir.

Q. What does "Sakito 1-A" represent, do you recall? A. The "Sakito Maru."

Q. At what stage?

A. Well, a little while before she made her turn.

Q. Can you tell us how far the "Sakito Maru" traveled between the positions "Sakito 1" and "Sakito 2" on this diagram, Olympic Exhibit No. 7?

A. Around about two or three lengths; something in that neighborhood.

Q. Two or three lengths of—

A. Of the "Sakito Maru."

(Testimony of Louis R. Ohiser.)

Q. It is your testimony then that the "Sakito Maru" was able, in two or three lengths, to assume the position of which you show here, as "Sakito 2," after she had been in the position shown for "Sakito 1," is that right? A. I think so. [381]

Q. Are you familiar with the turning circle of vessels? A. No, sir.

Q. You are an ordinary seaman?

A. I follow up the wiper down in the engine room, most of the time.

Q. Most of your experience aboard vessels has been in the engine room? A. That's right.

Q. You are not familiar with the maneuvers of vessels? A. No, sir.

Q. Are you familiar with navigation problems and situations?

A. I never took it up, no, sir.

Q. Referring to the testimony which you gave before the A Board, with reference to the distance that the "Sakito" was away from the "Olympic" at the time that she made this hard right turn, did you give this testimony:

"Q. About how far distant from your barge was the 'Sakito Maru' when its heading was in the direction which you have indicated by Diagram No. 2?

"A. About a length and a half of that boat.

"Q. About a length and a half of the 'Sakito Maru'? A. Yes, sir. [382]

"Q. How long do you estimate that boat to be?

(Testimony of Louis R. Ohiser.)

"A. Somewhere around a block or better.

"Q. Somewhere around a block or better?

"A. Yes, sir.

"Q. What do you think a block is?

"A. I couldn't say; four or five hundred feet.

"Q. Four or five hundred feet?

"A. Yes, sir."

Did you so testify, Mr. Ohiser, on that occasion?

A. I did. I was getting pretty tired at that time. They had me on there for hours; I couldn't exactly know what I was doing.

Q. You were on the witness stand for hours before the A Board?

A. I thought that was the other one you mentioned.

Q. No, this was before the A Board hearing.

A. I was very well shaken up.

Q. I mean, did you so testify at the time?

A. I did.

Q. That was on September 6, 1940. Do you recall that to be the date? A. Yes, sir.

Q. Now, referring to your testimony at the time your deposition was taken on February 14, 1941, will you indicate, after I have read this, whether you testified in this manner, on page 136: [383]

"Q. Now, you have indicated another position for the "Sakito Maru", which is marked on Petitioner's Exhibit No. 1 as "Sakito No. 2."

(Testimony of Louis R. Ohiser.)

About how long a period of time elapsed before the collision when the "Sakito Maru"—

"A. I couldn't say.

"Q. ——was in that position?

"Mr. Cluff: Wait a minute. You said 'I couldn't say' before he finished his question, so take your time, and think about it a little bit.

"(Record read by the reporter.)

"Q. By Mr. Adams: In other words, Mr. Ohiser, when the 'Sakito Maru' had reached the position which you have indicated on Petitioner's Exhibit No. 1 as 'Sakito N. 2' how much time elapsed until the collision, to your best recollection?

"A. Oh, a few minutes; something like that.

"Q. How far distant was the bow of the 'Sakito Maru' from the port side of the 'Olympic II' at that time, according to your best recollection?

"A. I couldn't say. I was just watching that point coming toward me. It kind of upset me, at the time she was coming.

"Q. Did it seem like she was two or three ship lengths away?

"A. Something like that.

"Q. When I say ship lengths, I mean 'Sakito Maru' ship [384] lengths.

"A. Yes; that's when she made the turn.

"Q. Did you watch her as she proceeded from the position that you have indicated as

(Testimony of Louis R. Ohiser.)

'Sakito 1' until she got in the position you have indicated as 'Sakito 2'?

"A. I kept watching her at all times.

"Q. Will you indicate, by the use of the models, by following—just moving the models so as to indicate how she made that turn, so as to get in that position? Can you move that model ahead so as to put her in the position No. 2 from position No. 1? Will you do that again, and stop when you get about midway between those two? Will you just follow that procedure again? And then stop when you get midway between the 'Sakito No. 1' and 'Sakito No. 2' to show the course of her turn? In other words, I am trying to get the position of her about midway between the positions you have marked 'Sakito No. 1' and 'Sakito No. 2'. Will you indicate by the maneuvering you have gone through with the model?

"Mr. Cluff: Do it slowly, and stop when you get to the stop mark; move it from one to the other, just as you saw the ship turn.

"Mr. Adams: Stop it there.

"Mr. Cluff: Let's hold it here.

"Mr. Adams: I am going to mark that 'Sakito 1-A'."

Mr. Adams: Will you stipulate, Mr. Cluff, that the diagram which you have indicated as "Olympic" No. 7, contains [385] this object which we marked

(Testimony of Louis R. Ohiser.)

“Sakito 1-A” at the time the deposition was taken?

Mr. Cluff: Yes.

Q. By Mr. Adams: Did you, Mr. Ohiser, in the manner in which I have just read it, at the time your deposition was taken? A. I did.

Q. Mr. Ohiser, when did you first commence standing lookout aboard the “Olympic” that morning?

A. Oh, between—it must have been about—do you mean at the bell?

Q. What do you conceive the duties of the lookout to be?

A. I was lookout all night long for the vessel.

Q. What were you doing as lookout, let's say, from daylight on?

A. I walked around the deck, and kept my eyes peeled for anything coming close.

Q. Did you continue to do that up until the time of the collision?

A. I kind of stopped when it started to get foggy and stood by the bell, ringing the bell.

Q. And you continued to stand by the bell as long as it was foggy? A. Yes.

Q. Now, while you were continuing to act as lookout, and ringing the bell, you left your position on the deck, and went [386] into the restaurant, and ate breakfast, didn't you?

A. That was after my hours were up.

Q. That was around 6:30 o'clock? A. Yes.

Q. While you were still standing lookout, wasn't it? A. After six o'clock.

(Testimony of Louis R. Ohiser.)

Q. After six o'clock?

A. Yes. I was through at six o'clock; my duties were done at six o'clock; but I said to the boys that I would stay and give them a little hand.

Q. Who was supposed to be on duty after six o'clock? A. The day crew.

Q. Who was supposed to sound the fog bell, if there was fog, after six?

A. I couldn't tell which one. They didn't tell me which one did it. I suppose the closest one to it, I believe.

Q. Did anyone come over to the fog bell, after you started ringing it, at six o'clock, and discuss with you whether you should continue ringing it, or he should start ringing it?

A. No, I did it of my own free will, to help them out.

Q. Incidentally, I believe you testified that after the "Sakito Maru" started to turn hard right, you started to ring the bell continuously, and Mr. Greenwood ran up and told you to ring it hard?

A. Yes, at that time, yes, sir. [387]

Q. Then he left? A. Yes.

Q. He did not help you ring the bell?

A. He took hold of it and we both kept going; then he quit and ran; he knew that the thing was going to hit us, I believe. I didn't ask him any questions.

Q. He didn't stay there very long?

A. No, a very short time.

(Testimony of Louis R. Ohiser.)

Q. Isn't it true, Mr. Ohiser, that up until the time you started to ring this bell continuously you were just giving light taps on that bell?

A. Continuously?

Q. No, I mean from the time you started ringing the bell continuously, when you were ringing it at intervals, following suit with the other barges?

A. I gave the ring I always gave.

Q. It was a light tap, wasn't it?

A. A little lighter than it was when the boat was coming toward us.

Q. The purpose of this distinctive ringing of the bell on the other barges was to attract the shore boats of the respective barges, isn't that true?

A. The shore boats, and those passing vessels.

Q. What was the purpose of the distinctive bell in reference to passing vessels?

A. So they would know there was more than one there, when [388] they heard it.

Q. Just what was it about the bells that indicated there was more than one?

A. As the "Rainbow" gave that ring, he would stop, and another would start right in and give one, a short one, and right afterwards I would give two short, and they would know there was three there; they could go by the sound.

Q. Is that something provided by the rules of the road? A. I think it is.

Mr. Cluff: I object to interrogating this witness on the rules of the road.

(Testimony of Louis R. Ohiser.)

The Court: I think there is a limit to cross examination. I gave you five minutes to shorten it up, and I think you just used it to get more ammunition.

Mr. Adams: I think I have got plenty.

The Court: I don't know about that, but when you said you were going to shorten it up, I think you misled the Court.

Mr. Adams: I did not mean to on that.

The Court: Proceed, but there is a limit to the cross examination. The Court does not have to sit here indefinitely and listen to it.

Mr. Adams: I don't want to tax the patience of the Court.

The Court: You have just about.

Mr. Adams: I am sorry if I have, but I have considered my interrogation material, and I thought it demonstrated the important features of this case. I am not just talking to be [389] talking, if the Court please. No further questions.

Mr. Eastham: May I ask a question, your Honor, since this witness is a sailor, and may not be here?

Q. I understand you to say just now, that you looked back at the "Olympic", after you got to the water taxi? A. I did.

Q. And saw young Joe Culp and the others?

A. I did.

Q. On the barge "Olympic"? A. Yes.

Q. What did you see about them?

A. It happened so quick; they disappeared in the water.

(Testimony of Louis R. Ohiser.)

Q. They disappeared in the water?

A. Yes, with the barge.

Q. The barge sank right under them?

A. Yes; they went with it.

Q. You haven't seen Culp or the other people since?

A. I haven't seen nobody since.

Mr. Eastham: That is all.

(Discussion omitted from the record.)

(Adjournment until Thursday, September 18, 1941, at 9:30 a. m.) [390]

Los Angeles, California,
Thursday, September 18, 1941. 9:30 a.m.

(Appearances have been heretofore noted.)

The Court: Proceed.

Mr. Cluff: Mr. Stiles.

STANFORD ROBERTS STILES
called as a witness on behalf of libelant, being first
duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. Stanford Roberts Stiles.

Direct Examination

Q. By Mr. Cluff: Mr. Stiles, you were captain
of the "Lillian L" at the time of the collision be-
tween the "Olympic" and the "Sakito Maru"?

(Testimony of Stanford Roberts Stiles.)

A. Yes, sir.

Q. That was one of the ships of the Hermosa Amusement Company, by whom you were employed?

A. Yes, sir.

Q. In the morning of the collision what time did you make your first trip from Cabrillo Beach?

A. We left Cabrillo Beach on the morning of the collision in the neighborhood of 6:25.

Q. And arrived at the barge at what time?

A. Approximately 7:05. [391]

Q. At approximately 7:05? A. Yes, sir.

Q. That was by the clock, by the "Lillian L's" clock? A. Yes, sir.

Q. Was that clock approximately right.

A. Well, pretty close.

Q. On the morning, as you were coming out to the "Lillian L" ("Olympic"), what was the condition of the weather? A. Foggy.

Q. Or coming out to the "Olympic"?

A. Foggy.

Q. And about what was the visibility?

A. Well, it wasn't any set amount. It would vary anywhere from 500 to—

Mr. Cluff: May I have the answer, please?

Mr. Adams: He isn't finished yet.

Mr. Cluff: Oh, pardon me.

A. It would vary anywhere from—visibility, I would say, would vary from three to eight hundred yards.

Q. Three to eight hundred yards. As you ap-

(Testimony of Stanford Roberts Stiles.)
proached the barges did the visibility increase or grow less?

A. Well, that I couldn't say because I observed the barges, which was on the course, and I didn't pay much attention to the visibility at that time.

Q. What was the first barge you saw as you came out? [392] A. "Point Loma".

Q. And when you came up to that—could you make out the "Olympic" before you reached the "Point Loma", could you see the "Olympic"?

A. Yes.

Q. About how much before you reached the "Point Loma"?

A. I couldn't answer that for sure.

Q. But it was some time before you reached the "Point Loma"? A. Yes.

Q. Did you pass around the bow of the "Point Loma" or around the stern?

A. Around the bow.

Q. When you came to the bow of the "Point Loma" could you see the "Olympic" clearly?

A. Yes.

Q. Did you happen to look in the direction of the "Rainbow"? A. No.

Q. Do you know how far the "Point Loma" was from the "Olympic"?

A. The "Point Loma", I would say, would be in the neighborhood of 500 yards.

Q. As you were coming out to the "Olympic" could you hear the bells from any of the barges?

(Testimony of Stanford Roberts Stiles.)

A. I never did at any time when I was working ahead. [393]

Q. What is that?

A. Not at any time while I was going ahead.

Q. Is there any reason why you can't hear the bells?

A. The engine is rather noisy, the exhaust and the muffler.

Q. You were down in the cabin at your controls?

A. Yes, sir.

Q. By the way, how many passengers did you have? A. Four, going out.

Q. Four, going out. And did you have a deck hand? A. No.

Q. You were alone? A. Alone.

Q. As you came alongside the barge which direction did you head?

A. To make a landing alongside?

Q. Yes. A. To the west.

Q. You headed west? A. Yes, sir.

Q. That is, the bow of the "Lillian L"—you circled around and the bow of the "Lillian L" headed in the same direction as the bow of the "Olympic"? A. Yes, sir.

Q. Then did you tie up?

A. Yes, sir. [394]

Q. With what lines?

A. Spring line, just a spring line.

Q. A spring line, that is a line that leads from a forward chuck back?

(Testimony of Stanford Roberts Stiles.)

A. The spring line is secured to the gangway on the barge and sets there on a peg, and when you come alongside you take it off the peg and put it on the bitt of the boat.

Q. I wonder if you would just show the court how a spring line is, how it is attached. [395]

State how a spring line attaches. Let us say this is the side of the landing. We will draw in a little boat here. Will you put on the spring line?

A. Here is the bit, right in the bow, and the spring line is secured to the gangway rail with a spring attached to the main part of the vessel, that leads through here, and around. There is an eye on the end of the spring line, which goes over the bit like this, and we keep the engine going ahead, and the rudder hard over.

Q. As the engine goes ahead it pushes on the spring?

A. Yes; the nose holds the bow, and the propeller holds the stern in.

Mr. Cluff: I will offer the diagram drawn by the witness in evidence, as "Olympic's" next exhibit.

The Clerk: "Olympic" No. 8.

Law clerq.

1138-Babine

Platfcr. Filt'r	VR.
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A. J. McLean, Clerk	

No. 1138-Babine
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED

JUL 13 1942

PAUL F. O'BRIEN,

CLERK

(Testimony of Stanford Roberts Stiles.)

Q. By Mr. Cluff: You left your motor idling, and your gear turning over slowly against the spring? A. Yes.

Q. Then your passengers disembarked, I suppose? A. Sir?

Q. Your passengers went aboard the barge?

A. Yes, sir.

Q. When you arrived at the "Olympic", and slowed down your engine, could you hear her bells?

A. Yes.

Q. How were they ringing them? [396]

A. At first they were ringing at intervals.

Q. Did you hear any break in the interval? That is, did the barge stop ringing its interval ring at any time? A. Yes, it did.

Q. Explain just how it did stop?

A. Well, it would ring in the neighborhood of five or six, or possibly seven, seconds, and there was an intermission there of possibly 30 or 40 seconds; then they would ring a like amount again.

Q. It was in intervals of 40 seconds?

A. About that, yes.

Q. Then, did you follow your passengers on deck? A. Yes.

Q. Where did you go, as you came on deck? I will let you see the photograph of the ship here. By the way, as you came on deck, was there any change in the ringing, as you had heard it in these intervals?

A. When I first came aboard the bell started ringing continuously.

(Testimony of Stanford Roberts Stiles.)

Q. That was constant ringing, without any interval there? A. Yes, sir.

Q. Where did you go when you came aboard? This is the port side, of course.

A. This is opposite the gangway. The gangway is just about opposite the galley. [397]

Q. About opposite the mizzenmast?

A. Kind of companionway. The poop deck extends over, and you come up the gangway, which is on the other side, and there is a door here, which leads into the galley.

Q. You were going to get a cup of coffee, I understand? A. Yes.

Q. You went into the passageway?

A. I came into the passageway, to the door, and a little girl told me about the ship.

Q. Was the little girl one of Joe Karsh's daughters? A. Yes.

Q. The little girl Shirley? A. Yes.

Q. Where was the girl?

A. Somewhere in this neighborhood, of the companionway.

Q. That is, the passageway? A. Yes.

Q. What was she saying, if anything?

Mr. Adams: I object to that upon the ground that no proper foundation has been laid; incompetent, irrelevant and immaterial; and hearsay.

The Court: It is hearsay.

Mr. Cluff: All right. The little girl said—

The Court: Of course, that applies to this deposition I read last night, to about 99 per cent of it.

(Testimony of Stanford Roberts Stiles.)

Mr. Adams: I will be glad to argue that point, if the [398] court please.

The Court: If this is hearsay, I would like to know why in any portion of Moynahan's deposition it is not hearsay. He talked to somebody on the "Point Loma", and to somebody on some other boat. It is all in the evidence. Go ahead.

Q. By Mr. Cluff: After you spoke to the little girl, what did you do? Did you leave anywhere?

A. Yes, I went over and looked.

Q. You looked when you were over on the port quarter-side?

A. To see if there was a ship approaching, as I was told.

Q. Never mind that. What did you see?

Mr. Adams: If the court please, if Shirley Karsh simply notified the witness of the approach of a vessel, I do not concede that to be hearsay, because it is not offered to prove that a vessel was approaching, but simply to give this witness notice. That is the same theory upon which I intend to argue about the hearsay rule in the Moynahan deposition. In view of the witness' statement just now that she simply notified him that a vessel was approaching, I withdraw my objection upon the ground that it is hearsay.

The Court: Proceed.

Q. By Mr. Cluff: You looked out the port side, and [399] saw what?

A. A Japanese freighter approaching.

(Testimony of Stanford Roberts Stiles.)

Q. Was that the "Sakito Maru"?

A. Yes.

Q. How did the Japanese freighter appear to you, as you were standing on the port alleyway?

A. I stepped out, and he appeared to be coming in this angle.

Q. Making an angle of about—

Mr. Adams: I would rather have the witness indicate it better than just putting his hand against the photograph.

Mr. Cluff: Let us get at it in another way. I am going to show you "Olympic" Exhibit No. 4. I will point to a shape that shows the "Olympic", and ask you to take my pencil and make a cross at about the point, not with regard to distance, but to bearing, at which you saw the Japanese freighter approaching, this being the port side.

A. I observed it from here.

Q. Will you draw a line toward the angle where you saw it approaching?

A. He was not headed exactly for where I was located. He was headed up in this general locality.

The Court: Draw the angle he seemed to be approaching the vessel.

Mr. Cluff: You have drawn an arrow, and we will write in the word "Stiles". We have got an "S" here before. [400] The witness has drawn an arrow to the port of the shape of the "Olympic", to which I have written the name "Stiles".

Q. How far was she at the time you first saw her?

(Testimony of Stanford Roberts Stiles.)

A. As I recall, it was in the neighborhood of between 100 and 150 yards.

Q. Was all the ship clear to you?

A. No, the bow was principally the main thing that loomed up to me. [401]

Q. Was the rest of it obscured in any way?

A. It was at an angle where I couldn't see the whole vessel.

Q. You could see the whole of the starboard side? A. Yes.

Q. And the masts?

A. I don't recall seeing the masts.

Q. You were not conscious of the masts?

A. No, I am not.

Q. How long have you been going to sea, Mr. Stiles?

A. I haven't been going to sea; I have been working around small boats.

Q. I mean going to sea around the harbor.

A. Ever since I was about ten years old.

Q. You are how old now?

A. Twenty-seven.

Q. Have you been engaged in operating water taxis, and boats like the "Lillian L"?

A. Yes, sir.

Q. For how many years? A. Eleven.

Q. Eleven years constantly? A. Yes.

Q. Do you hold any licenses by the Sea Boat Inspection Service or by the Bureau of Navigation, rather? A. Yes. [402]

(Testimony of Stanford Roberts Stiles.)

Q. What license?

A. At present I hold a motor boat operator's, and I have just passed an examination for pilot, San Pedro.

Q. You passed the examination? A. Yes.

Q. I congratulate you. I knew you were taking them yesterday. That is pilot what class?

A. Second, 150 tons.

Q. It gives you the right to handle vessels up to what size? A. 150 tons.

Q. In your experience have you had occasion to determine the speed of vessels moving in the harbor, or moving about in the water?

A. Oh, yes.

Q. How fast was the "Sakito Maru" going at the time you saw her there?

Mr. Adams: That is objected to upon the ground that it calls for the conclusion of the witness; no proper foundation laid; incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Cluff: Let me ask you a preliminary question: How long did you stay there and continue to watch her?

A. Just long enough to observe that there was a collision coming up.

Q. Were you able to form an estimate of how fast she was [403] going?

Mr. Adams: That is objected to upon the same ground; upon the further ground that the witness

(Testimony of Stanford Roberts Stiles.)
has just indicated by his own testimony that he did not try to observe her, and further, his estimate must be based upon only speculation.

The Court: Overruled.

Mr. Cluff: Answer the question.

A. The question again, please?

(Question read by the reporter.)

A. Yes, I observed that she was moving right along from the boil on the bow.

Q. She was rolling a bow wave? A. Yes.

Q. And you knew how fast she was going?

A. This is a calculation, eight to ten knots; that isn't exact.

Q. That is your estimate, eight to ten knots?

Mr. Adams: Same objection to the whole line of examination.

The Court: Overruled.

Q. By Mr. Cluff: Did she change her heading?

A. Not that I observed.

Q. At any time while you saw her?

A. I did not look long enough to see.

Q. On that heading, when you first saw her, was she headed so that if she continued on that course she would strike the [404] barge?

A. Yes, sir.

Q. What did you do next after having seen the ship?

A. I hollered out to the people that were fishing on the port side, to come back quick.

Q. Come back?

(Testimony of Stanford Roberts Stiles.)

A. Come back, meaning to come back where I was.

Q. Then what did you do?

A. Then I made, as quick as I could, to the shore boat, which was on the other side.

Q. That is, you went out through the alleyway, which was on the starboard side, down the gangway?

A. Yes.

Q. Were you followed by any people?

A. Yes.

Q. How many?

A. Immediately I was followed by the little girl, Shirley Karsh, and just a few seconds later six more passengers.

Q. Can you give us any idea of how many feet it was from where you were standing and saw the ship, to the gangway?

A. It was almost the breadth of the ship. She was 38 feet, so I would say 35 feet, anyway, or 34.

Q. Then you went down the steps of the gangway, to the lower landing? A. Yes.

Q. You got on the "Lillian L"? [405]

A. Yes.

Q. What did you do with the lines?

A. The first thought, when I got aboard, was that I had to get the spring line off, and that I did as soon as possible.

Q. Now, did any passengers get aboard the "Lillian L" or any people?

A. Before I got away?

Q. Yes. A. Seven.

(Testimony of Stanford Roberts Stiles.)

Q. Seven people came aboard?

A. Yes, sir.

Q. Including little Shirley Karsh?

A. Yes.

Q. Were they on board before the impact, before the collision?

A. Shirley was, I am quite sure, and I couldn't say about the others. I don't think they were.

Q. Where were you at the moment the impact came?

A. Just starting in the wheel house. I had—

Q. Of the "Lillian L"? A. Yes, sir.

Q. Will you describe the effect of the impact?

A. When the "Sakito Maru" first rammed the "Olympic", why the "Olympic" keeled way over. The uprights on the outer part of the gangway, which are as high as the bulwarks on the barge itself, went down below the deck of the "Lillian L", and [406] at the same time she was moving broadside very rapidly.

Q. That is, the "Olympic" was moving broadside? A. And the "Lillian L".

Q. Was the impact such that you were able to hold your feet or—

A. No. The immediate impact knocked me off my feet.

Q. Then what did you do?

A. As soon as I regained my equilibrium, why, I went on in to the wheel and I looked back through the window and saw that some passengers were getting on. [407] So I shut the power down as soon

(Testimony of Stanford Roberts Stiles.)

as I got in the wheelhouse. I blasted, of course, for full ahead, but I saw I was going to take on some passengers so I backed it on down but still had it in gear.

Q. Still had it in gear, but slowed down the engine?

A. Yes, sir. After I saw that all were on board that were going to get on board at that moment I gave it full ahead again and I was held there for a number of seconds before I could get clear.

Q. Could you tell what it was that held you?

A. I imagine the side motion.

Q. The sideways motion? A. Broadside.

Mr. Adams: I move the answer be stricken on the ground it is speculative.

The Court: It is speculative. He imagines. It may be stricken.

Q. By Mr. Cluff: Do you know whether or not the "Lillian L" was caught under the floor of the platform by the heeling of the "Olympic"?

A. It was caught.

Q. It was so caught? A. Yes, sir.

Q. Can you form an estimate of how far sideways the "Olympic" and your "Lillian L" were driven before she got free? [408]

A. That is an estimate. I would say in the neighborhood of 300 feet.

Q. Then what happened?

A. Then I got free.

Q. That is, you just found that the boat was free. What did you do then.

(Testimony of Stanford Roberts Stiles.)

A. She had lost her momentum enough then that I could pull away.

Q. Then you speeded up and pulled away?

A. And pulled away.

Q. How did you direct the course of the "Lillian L" as you pulled away?

A. In a circle. That would be hard over right.

Q. By the way, the other Karsh girl, Lillian, do you remember of seeing her?

The Court: Is that of any materiality?

Mr. Cluff: I don't think it is so material.

The Court: Then why go into it?

Mr. Cluff: The little girl was confused and I thought maybe we could straighten it out. I don't know as it is very material.

The Court: I know, but the little girl got aboard the boat and that was all there was to it.

Mr. Cluff: This was the other girl who testified on the stand that I was talking about.

The Court: I know. [409]

Mr. Cluff: I won't go into it.

Q. After pulling away from the side of the "Olympic" how did you handle the "Lillian L"?

A. I kept her in a hard right position, the rudder.

Q. So she circled around?

A. To make a circle and come back alongside.

Q. Yes. Go ahead now in your own way and tell us what you observed.

A. I started to make a circle and I saw I couldn't .

(Testimony of Stanford Roberts Stiles.)

make it or make the turn because the ship still had momentum in a side motion.

Q. That is, the radius was too small to permit you to turn around?

A. Yes, sir. Ordinarily, under normal conditions, you can do that; but inasmuch as the barge had way, going sideways, I couldn't make the turn; so I started to back down and the boat was rather clumsy and under-powered for her weight. I observed a water taxi just to the west a little ways and I blew a bunch of short blasts.

Q. That is, a little ways to the west of the "Olympic"? A. West of me.

Q. To the west of you.

A. He was not directly west of the "Olympic", in a westerly direction.

Q. That was the water taxi "H-10" of —

A. No. 7 or 17, or something. [410]

Q. Of Captain Smith's? A. Yes, sir.

Q. Then what happened? What did the "H-10" do?

A. When I saw that attracted his attention, I motioned for him to go alongside the gangway, which he did immediately.

Q. He came in with his bow in which direction?

A. East. From the west, he ran his bow right into the east, alongside the gangway. [411]

Q. At that time were you moving in the "Lillian L" or adrift?

(Testimony of Stanford Roberts Stiles.)

A. No; I checked the way.

The Court: These maneuvers at this time are not so material. We have had enough testimony on that. I am interested now about the sinking of the boat. Let us get down to that.

Mr. Cluff: All right.

Q. Will you describe, Mr. Stiles, just what you saw in connection with the sinking of the "Olympic" and any moves of the Japanese steamer after you were able to observe, after getting away from the side of the ship?

Q. By the Court: Did you keep your eyes on both of the boats? Did you keep your eyes on the "Olympic" and the "Sakito Maru"?

A. No; I didn't; just the "Olympic".

Q. By Mr. Cluff: I mean as you were lying there after getting away?

A. As I was lying there, the last time I observed the Japanese vessel, her bow was over halfway through the "Olympic". And then I was interested mainly in getting away from there with the boat I was operating.

Q. By the Court: You did not see, then, the "Sakito Maru" withdraw?

A. No; I didn't. I made the circle and I was interested in getting the passengers off, because I saw that she had a [412] big hole in her bow and I saw that the "Sakito" was gone. I didn't see it any more, but I saw that it was gone, and I knew that she had the big hole and figured it would be

(Testimony of Stanford Roberts Stiles.)
just a matter of a very few minutes until she sank.
So I was interested in getting the water taxi over
there, and he did get alongside as quick as anything.

The Court: Let us not go into the rescue of these
people.

Q. By Mr. Cluff: Did you see the "Olympic"
sinking? A. Yes.

Q. As you pulled away from the side the first
time you saw her after she pulled away how much
freeboard did she have on the starboard side there
that you could see?

A. After I had made the circle?

Q. After you had pulled away and the first time
you saw her afterwards?

A. Well, she looked like she had about the same,
the same as she normally had.

Q. About the same as she normally had?

A. Yes, sir.

Q. Did you see her settling in the water?

A. Yes, sir.

Q. Did she settle slowly or rapidly?

A. Rapidly.

Q. By that time the Japanese steamer was gone?

A. Gone. [413]

Q. You saw her go down with your own eyes?

A. Yes, sir.

Q. With the "H-10" still alongside?

A. Yes, sir.

Mr. Cluff: That is all.

(Testimony of Stanford Roberts Stiles.)

Cross-Examination

Q. By Mr. Adams: Mr. Stiles, what was the normal freeboard of the "Olympic"?

A. Well, we—that I don't know.

Q. Then how could you tell that her freeboard at the time you saw her was just normal? You meant it looked just the same as before, is that what you meant?

A. Judging from the water line; yes.

Q. As I understand your testimony, as you approached the barges that morning you could not hear their bells?

A. I never heard until I got there.

Q. When you say "until you got there" do you mean until you got alongside the "Olympic"?

A. Yes, sir, until I was making the landing.

Q. That was the first time you heard the bells of any barge?

A. No. I heard the "Point Loma" as I went by there.

Q. How close did you pass by the "Point Loma"? A. 50 feet.

Q. And about how many times did you hear the "Point [414] Loma" bell ring while you were passing? A. Once, I believe.

Q. Just once. How close were you to the "Olympic" before you heard her bell?

A. Possibly 200 feet.

Q. Your engines were still going then?

(Testimony of Stanford Roberts Stiles.)

A. Yes, but slow.

Q. But slow. In other words, you had cut down your engine, is that it? A. Yes, sir.

Q. At that point? A. Oh, yes.

Q. Then you came alongside the "Olympic" and discharged your passengers, did you not?

A. That is right.

Q. In making your landing alongside the "Olympic" was it necessary for you to put your engines in reverse? A. Yes, sir.

Q. You could not hear the "Olympic" bell while your engines were in reverse, even though your ship was alongside, could you.

A. Yes; you could, providing you were going in reverse slow.

Q. Well, did you? Did you hear them while your engines were in reverse, while your "Lillian L" was alongside the "Olympic" that morning? [415]

A. That I couldn't say, because just for maybe 30 seconds that you are in reverse. It may not be that long.

Q. How much of an interval elapsed between the bell that you heard immediately before you put your engines in reverse and the next bell that you heard after you took your engines out of reverse?

A. That I couldn't say right now.

Q. You have had experience when you have been alongside the "Olympic" under conditions similar to these, when your engines were in reverse and you

(Testimony of Stanford Roberts Stiles.)
couldn't hear the "Olympic" bell, is that right?

A. I couldn't say to that. We never stay in reverse alongside.

Q. Do you recall testifying before the A. Board on September 6th? A. Yes, sir.

Q. So that you recall giving this testimony at that time:

"Q. What was the intervals between the time he rang?"

"A. When I was first approaching I could hear her ringing, and then when I was in reverse I couldn't hear it. Whether I was—I heard the bell ringing constantly. It was ringing constantly when I went on deck and the closer the Jap ship approached the barge the harder the bell rang."

Does that refresh your recollection as to whether or not you could hear the "Olympic" bell while you were in [416] reverse that morning?

A. No; it doesn't refresh it any, because I don't remember hearing any bell in reverse.

Q. Your testimony simply is that while you were in reverse you didn't hear any bell? A. Yes.

Q. And what was the longest time that you were in reverse while you were making a landing?

A. I didn't time it, but it never runs over 20, or possibly 30 seconds at the most.

Q. You spoke about the intervals between the bells of the "Olympic" when you did hear them. Upon what basis did you make the estimate of time?

(Testimony of Stanford Roberts Stiles.)

A. Well, it was pretty close, you can judge pretty close by the ring of the bell and then the interval in between. You ring the bell six seconds and your interval runs approximately eight times that, or seven times it.

Q. You mean that would be what the interval should be if one abided by the law?

A. That is right.

Q. Is that what you mean?

A. Well, that is about what the interval was in this particular case. The law calls for four to six seconds every minute.

Q. Did you time any of the intervals with a watch?

A. Not on that particular day, but I have timed it. [417]

Q. Did you ever time any bells that Mr. Ohiser rang?

A. I couldn't say for sure, although I have checked it occasionally.

Q. But you don't know whether Mr. Ohiser was ringing the bell?

A. I know he was ringing the bell that morning.

Q. I mean on other mornings when you did check it?

The Court: It has been asked and answered.

A. No; I couldn't.

The Court: He has answered it.

Q. By Mr. Adams: How long after you first observed the "Sakito" approaching the "Olympic"

(Testimony of Stanford Roberts Stiles.)

did you stand there and watch the "Sakito" approach?

A. Just long enough to observe that it was going to collide with the "Olympic". And I—

Q. That really does not give us any idea as to how long you remained there. Can you estimate it in terms of time?

The Court: If you can.

Mr. Adams: If you cannot—

A. Of course, that is a tough estimate, because when you see something coming at you you are not going to estimate how long you are standing there, looking at it.

Q. You did not remain there very long, did you?

A. No; just long enough to observe that—the first thing I saw was the Japanese flag, and then I raised my eyes [418] to look at the superstructure; and when you are looking at something like that, of course, if there is boiling on the bow, that is the first thing you observe, too, that is one of the things.

Q. Did the "Sakito Maru" appear to be emerging from fog when you saw her?

A. Emerging from fog?

Q. Yes. A. Well, there was fog all around.

Q. There was fog all around? A. Yes, sir.

Q. You say you were not conscious of having observed her masts? A. No.

Q. Do I understand your testimony to be that your estimate that the "Olympic" was driven about 300 feet through the water before the "Lillian L" got free, and you were able to pull away?

(Testimony of Stanford Roberts Stiles.)

A. Roughly, yes.

Q. Did the "Olympic" come to rest very shortly after that?

A. Yes; pretty shortly. It depends, of course, on what you mean by "shortly".

Q. Well, what do you mean by "shortly"—on that occasion I mean?

The Court: I think the question calls for an answer [419] that is hard for anybody to give that means anything. I think you should pin it down to the time. There is a lot of criticism of "shortly" and "quickly". [420]

Mr. Adams: I am trying to arrive at terms of feet.

Q. Can you give us any estimate of how much further she might have gone through the water after you did get free?

A. No; I couldn't, because I was under way myself and that is pretty hard to say. When it is chasing you, why you can't very well judge just what it is doing.

Q. When you next looked at the "Olympic" was her momentum checked?

A. Pretty much so; yes.

Q. Where were you when you made that observation? A. Off the starboard quarter.

Q. About how far forward had you gone?

A. Forward?

Q. Yes; when you made the observation.

A. I am referring to after the barge, after it

(Testimony of Stanford Roberts Stiles.)

being—I made a circle hard right and the boat would circle in approximately 400 feet, not over that.

Q. And at that time after you made the first attempt to circle did you observe the "Olympic"? That was the first time you observed her after you pulled away?

A. You see, I went around hard right, left it hard right and went around, and of course, I observed it to make a landing again and saw that I couldn't do it.

Q. Was she at rest at that time?

A. I couldn't say for sure. [421]

Q. You were not conscious of any movement through the water?

A. Well, I couldn't say that, inasmuch as I was conscious of the boat I was on, that I couldn't make the turn and I had to back down. So, whether it was on account she still had way on or not, I don't know.

Q. The landing on the starboard side of the "Olympic" was near the after end, was it not?

A. That is right.

Q. Were you conscious of the "Olympic's" stern swinging in an arc? In other words, did the stern—

A. No.

Q. —of the "Olympic" seem to be moving to you more than the bow?

A. No. It seemed to move just directly broadside, not pivoted. I imagine that is what you mean?

Q. Yes. Well, after you came around on a hard

(Testimony of Stanford Roberts Stiles.)

right and observed the "Olympic" again was her heading the same as she headed when she rode at anchor before the collision?

A. Approximately so.

Q. Did her heading change any before the barge sank, from her original heading?

A. Very little.

Q. On what portion of the port side of the "Olympic" did the "Sakito Maru" come in contact?

A. Just forward of the pole rack which, according to [422] this picture, looks approximately amidship.

Q. Will you indicate it on there?

A. Right here.

Q. You are referring now to—let's see. This is—

The Court: Exhibit 4 "Olympic".

Mr. Adams: Let me see.

Mr. Cluff: This isn't 4. This is "Olympic's"—

Mr. Adams: No; that is the other.

Mr. Cluff: Oh, here we are. This is the "Olympic's" 1.

The Court: 1.

Q. By Mr. Adams: Will you point out—

A. Right here.

Mr. Cluff: Indicating a point just forward of the main mast.

Mr. Adams: Yes.

Q. I believe you stated that the "Sakito's" bow

(Testimony of Stanford Roberts Stiles.) seemed to penetrate about half way through the "Olympic"?

A. Further than half way, because the pole rack runs athwartships here, and I was over here at the gangway and I saw the bow, so it had about passed the amidship.

Q. That was the top of the bow that you saw?

A. That is right.

Q. Where was the top of the bow with reference to the starboard side of the "Olympic"?

A. Well, here is your starboard side over here and your bow, of course, was headed towards the starboard side. [423]

Q. Well, that is right. But did the top of the bow— A. The rake.

Q. Of your rake?

A. Well, that was well past the amidship.

Q. It was well past the amidship?

A. Oh, yes.

Q. Did it extend as far as the starboard side of the "Olympic"? A. No. No.

Q. Can you tell us how far it did extend beyond a line drawn parallel and above the keel?

A. Well, now, that is getting down to guessing again.

The Court: We don't want any guessing.

Q. By Mr. Adams: Well, we don't want you to guess. But can you estimate how far the top of the prow was from the starboard side of the "Olympic"?

(Testimony of Stanford Roberts Stiles.)

The Court: If you know.

A. No, I couldn't say.

Q. By Mr. Adams: Your observations, as to how far the "Sakito" penetrated the "Olympic", were you made while you were aboard the "Lillian L", is that correct? A. Yes, at the gangway.

Q. Had you yet boarded the "Lillian L", or were you at the gangway going down?

A. No, I was on the "Lillian L".

Q. Standing on what portion of the "Lillian L"? [424] A. In the wheelhouse.

Q. How high is that above the surface of the water? A. The deck and the wheelhouse?

Q. Yes.

A. Probably in the neighborhood of 3 feet.

Q. How tall are you? A. 5, 9.

Q. You have testified you did not know the normal freeboard of the "Olympic" at that time?

A. No.

The Court: That has been asked and answered, counsel.

Q. By Mr. Adams: When you first saw the "Sakito Maru" did you judge her heading to be of such a nature that she was bound to collide with the "Olympic"?

A. Yes, at the speed she was going.

Q. It was your judgment, was it, that with the "Sakito" heading as she appeared to be at that time she would strike the "Olympic" about midships? A. Or just possibly a little forward.

(Testimony of Stanford Roberts Stiles.)

Q. Did you estimate, when you saw her, that she would strike the "Olympic" at about the point where she actually did? A. Approximately.

Mr. Adams: No further questions.

Mr. Cluff: Just one question I overlooked on redirect: As you stood there at the gangway, and looked at the "Sakito", [425] did you see any lookout on the forecastle head?

A. Never at any time did I see anyone, until after the collision.

Q. You didn't see any man until after the collision? A. No.

Q. From where you were standing, if a man had been standing in the bow, with his trunk and head above the bulwark—I will withdraw that. Did you see any man with his trunk and head in the extreme bow above the bulwark, from his waist?

A. No, I did not.

Mr. Adams: I object to that as already having been asked and answered.

Mr. Cluff: All right. That is all.

Cross Examination

Q. By Mr. Black: When you stated that you arrived alongside at 7:05, or about 7:05, was that based on an actual check of your watch?

A. Yes, sir, on the ship's clock.

Q. Did you happen to notice the time again by that clock, at any time?

A. When I went aboard, after the collision.

(Testimony of Stanford Roberts Stiles.)

Q. That was after the collision?

A. Yes.

Mr. Black: That is all. [426]

Cross Examination

Q. By Mr. Adams: I would like to ask one question in connection with that subject. When was that clock last checked?

A. We checked it whenever anyone came aboard with a good watch; what we figured was a good watch.

Q. Did you check it that morning? Did anyone have a good watch on board?

A. We never checked it that morning.

Q. You don't recall having checked it that morning? A. We did not check it that morning.

Q. Did you check it the previous morning?

A. We did not check it at any certain intervals although we wound it every Sunday, and whenever anyone came aboard and claimed that he had the right time, of course, there was always a dispute there, and if they could convince us they were closer to right than we were, we would take their word for it, and set the clock.

Mr. Adams: No further questions.

Mr. Cluff: So far as the Hermosa Amusement Corporation is concerned, that is our case in chief.

The Court: I thought you were going to present some evidence here about the markings on the "Sakito Maru"?

Mr. Cluff: I will do that. I figured it was rebuttal, and when they made a showing we would. However, I will be glad to do that now. [427]

The Court: That is coming in anyhow?

Mr. Cluff: It is coming in, yes.

Mr. Montgomery: May we have just a short recess with other counsel, to see if they are all satisfied to rest now? Personally, I am.

The Court: I just want to know if anyone has anything further to say, or offer? If he does, let us hear from him.

Mr. Adams: I take it then not only the Hermosa, but all the other libelants rest.

The Court: Yes.

Mr. Adams: If the Hermosa's case in chief, or the libelants' case in chief, is closed, it seems to me that we should be permitted to finish with our cross examination of Captain Anderson.

The Court: I think the cross examination of Captain Anderson is your case. It was not proper cross examination, the matters you were going into.

Mr. Adams: I hadn't completed all of my cross with Captain Anderson. I don't think it makes a great deal of difference. I would suggest that we be permitted to call him now.

The Court: There is no objection. He is here.

Mr. Adams: I was going to suggest that those portions of the interrogation that are proper cross be considered, as part of the case.

The Court: You may proceed. [428]

JOAKIM M. ANDERSON,
recalled as a witness on behalf of the libelant, testified further as follows:

Cross-Examination

Q. By Mr. Adams: Now, Captain, what was the draft of the "Olympic" on the day of the collision, prior to the collision? A. 16.6 aft.

Q. And forward?

A. About 15, approximately, as far as I remember now.

Q. I believe you testified that the "Olympic" was built in 1877, but I don't know whether you testified she was built in Belfast, Ireland.

The Court: That has been testified to, counsel. [429]

Q. By Mr. Adams: Now, Captain Anderson, you testified that you have never had a certificate for the "Olympic" since, I believe, 1938?

Mr. Cluff: Just a minute. I object to that upon the ground that it is not cross examination. I propose to go fully into the inspection situation in rebuttal if it is made an issue in this case.

The Court: Let me tell you this: I am not going to draw any close line between what is proper rebuttal, and what is not. I am going to give each side an opportunity to get in all the evidence that they have. I am going to be liberal in that respect; I am not going to hold anybody down. Even after Mr. Adams is through, if they have additional evidence, I am going to exercise my discretion, and let all the evidence go in. It isn't going to make a great deal

(Testimony of Joakim M. Anderson.)
of difference, whether they call it rebuttal or not.
I have tried to cut down all the evidence that is
cumulative.

Mr. Cluff: If I can go into it at any time, then,
I will withdraw my objection.

The Witness: May I then explain, your Honor,
from the beginning of this inspection business?

The Court: Answer the questions, Captain.

A. Yes, sir.

Q. By Mr. Adams: The last certificate you had
was in 1938? [430] A. Yes.

Q. That was picked up by the Bureau of Marine
Inspection and Navigation?

A. They demanded us to put on a load line.

Q. You did not comply with their demands and
they took up your certificate, did they not?

A. That's right.

Q. The last certificate you had required you to
have two certificated lifeboat men?

The Court: As I understand, when they required
you to comply with the load requirement, they took
up your certificate at that time?

A. Yes, and no more was said until 1939, when
I was called up to the inspector's office to give a blue-
print of the ship, as there were more rules and regu-
lations going into effect by Captain Sullivan—

Mr. Adams: I don't care to have you give a com-
plete narration of this, other than to answer my
question, unless the court cares to have you. I wish
you would confine your answers to my question.

(Testimony of Joakim M. Anderson.)

Mr. Cluff: I suggest, Captain Anderson, that you just answer the questions, and let me try our case.

A. It is well.

Q. By Mr. Adams: The certificate you last had, which was picked up in 1938, required you to have two certificated lifeboat men? [431] A. Yes.

Mr. Montgomery: I object to that as immaterial.

The Court: Overruled.

Q. By Mr. Adams: After the Bureau of Marine Inspection and Navigation served upon you this mimeographed list, which has been offered in evidence, as "Sakito" B, the Hermosa took an appeal from that order to the Director of the Department of Commerce; that is, the Director of the Bureau of Marine Inspection and Navigation, in the Department of Commerce.

The Court: The record is the best evidence in that case, is it not?

Mr. Adams: Yes. This is a preliminary question.

The Court: I don't know whether it is preliminary or not, when you ask him if he took an appeal. Let us have the record.

Mr. Adams: I have the final decision.

The Court: You said he appealed. It must have been in writing.

Mr. Adams: It is in writing in the form of a letter. I have asked the Hermosa people to produce all the correspondence.

Mr. Cluff: Tell me what you want and I will give it to you.

(Testimony of Joakim M. Anderson.)

Mr. Adams: I was going to introduce, if the court please, the final letter on this, as I understand it to be, from R. S. Field, to the Director of the Bureau, dated July [432] 24, 1940. If there are any intervening papers that anyone thinks are material, I have no objection to introducing those. That's what I wish to offer.

Mr. Cluff: Just ask for what you want, and I will give it to you.

Mr. Adams: I want the letter to Mr. Lansburgh addressed to him by Mr. R. S. Field, under date of July 24, 1940.

Mr. Cluff: I have that here. Anything else?

Mr. Adams: That is all I want right now.

Mr. Montgomery: May our objection run to this whole line of testimony?

The Court: Yes.

Mr. Fall: Not as far as the interveners International Broadcasting Company and John Gilbert Montgomery, are concerned.

Mr. Black: Let the record show that the libelants McGrath do not object.

Mr. Stearns: Nor do the libelants Mayo object.

Q. By Mr. Adams: Captain Anderson, I show you this letter that we have been talking about, and ask you if that is not the letter that Mr. Lansburgh, of the Hermosa Amusement Company, received from Mr. Field.

Mr. Cluff: We admit that it is. You don't need to identify it.

(Testimony of Joakim M. Anderson.)

Mr. Adams: All right. I will offer it in evidence, if [433] the court please.

The Clerk: "Sakito" Exhibit E.

SAKITO EXHIBIT No. E

DEPARMENT OF COMMERCE

Bureau of

Marine Inspection and Navigation

Washington

July 24, 1940

In reply refer to
3-16888

Mr. S. Laz Lansburgh,
105 Montgomery Street,
San Francisco, California.

My dear Mr. Lansburgh:

Reference is made to your letter dated July 9, 1940, together with enclosure marked "Exhibit A", appealing from the actions of the Board of Local Inspectors at San Pedro and the Supervising Inspector at San Francisco, California, with respect to the application of the requirements itemized in "Exhibit A" to the non-self-propelled pleasure vessel OLYMPIC II of 1766 gross tons anchored at sea three and one-half miles off the breakwater at San Pedro, California.

46 U. S. C. 395 to 400 provides in effect that all seagoing non-self-propelled vessels of 100 gross tons

(Testimony of Joakim M. Anderson.)

or over shall be in suitable condition so as to warrant the belief that such vessels may be employed in the services in which they are engaged with safety. The statutes further provide that until this standard is fully complied with the Local Inspectors are not authorized to issue a certificate of inspection to any such vessels.

I have reviewed the requirements itemized in "Exhibit A" in relation to their applicability to the OLYMPIC II, permanently anchored as a non-self-propelled pleasure vessel on the high seas, and am of the opinion that such requirements are reasonable and generally necessary to adequately ensure the safety and protection of the patronizing public.

Since no specific requirement itemized in "Exhibit A" is appealed, and as I am of the opinion that the requirements of the Local Inspectors are reasonable in view of the services in which the OLYMPIC II is engaged, I am unable to find any reversible error in the actions of the Local Inspectors or the Supervising Inspector which actions are hereby sustained.

Sincerely yours,
R. S. FIELD,
Director.

[Endorsed]: Filed Sep. 18, 1941.

The Court: Instead of taking up a lot of time on this phase of it, it seems to me you gentlemen should be able to stipulate that certain requirements

(Testimony of Joakim M. Anderson.)

were made, that were not complied with; it is simply a question of whether they had to, or whether they contributed to the accident. If the boat was absolutely unseaworthy, it would not justify running it down, if that is what happened.

Mr. Adams: The court will appreciate that it will have a material bearing upon several issues in this case. First, it would have a bearing upon whether the barge would have sunk.

The Court: I don't know, when you cut a boat half in two, that you can blame the boat for sinking.

Mr. Adams: It depends upon what type of boat. Many boats are cut in two, and that is why in fact naval architects spend as much time as they do designing collision tight and watertight bulkheads. That is why.

The Court: I don't care about arguing it now. Proceed. I am just making comments; if you cut a boat half in two, some of these trivial requirements, bulkheads, and things of that sort, that is something you can argue about,—whether they had enough berths for people to sleep in, under the load line Act, or whether that had anything to do with death, I can't see. [434]

Mr. Adams: No one has ever pleaded that, and I have never made any statement to that effect, but I am perfectly willing to stipulate that many of these requirements were not complied with.

Mr. Cluff: That isn't a fact. If you will pick out the different things and ask Captain Anderson whether they had them—

(Testimony of Joakim M. Anderson.)

The Court: Let us not have any argument. Proceed.

Q. By Mr. Adams: Captain Anderson, I refer you to "Sakito" B, and particularly to the mimeographed list of specifications, as a part of that exhibit; under the title "Hull" there is item 1: "The vessel shall be dry-docked for inspection." Was that done following the receipt of the specifications?

The Court: That was asked and answered, counsel.

The Witness: Yes, that was answered.

The Court: Just a moment now. That was asked and answered.

Q. By Mr. Adams: With respect to item 2, were the various structures there inspected and tested, to determine the actual conditions, and were any repairs or renewals or replacements made to any of those structures?

A. That was also answered, Mr. Adams.

Mr. Adams: If the court please——

The Court: You can answer that question.

A. No, sir. [435]

Q. By Mr. Adams: With respect to item No. 4, Captain, were any watertight bulkheads fitted into the "Olympic," after you received these specifications? A. No, sir.

Q. There was no change made with respect to the bulkheads, was there? A. No, sir.

Q. Was any change made with respect to the structural strength of the "Olympic"?

(Testimony of Joakim M. Anderson.)

A. No, sir.

Mr. Cluff: I submit that is not a question.

Mr. Adams: I am sorry——

Mr. Cluff: I don't know how you can——

The Court: Just a minute, gentlemen. Discontinue the argument. Go ahead; proceed. If you have any objection, make it.

Q. By Mr. Adams: With respect to item No. 9, were any changes made with reference to that item?

The Court: What is the item?

Q. By Mr. Adams: "Platforms, stagings and gallery runways rigged outside of the hull shall be of suitable construction and not less than three square feet of deck space shall be allowed for each person; and where enclosed, shall be provided with at least two means of escape."

Mr. Cluff: I think it should be first shown that the vessel did not comply with that. [436]

The Court: Did you comply with that?

A. No, sir.

Q. By Mr. Adams: With respect to item No. 11, which reads: "An inclining test shall be made by a representative of the Bureau." Was any inclining test ever made, after receiving these specifications? A. No, sir.

Q. Under the title "Hull Equipment" item 20 d. reads: "An efficient fog bell." Was any different fog bell placed upon the "Olympic" than previously aboard that vessel?

Mr. Cluff: To which we object upon the ground

(Testimony of Joakim M. Anderson.)
that no showing has been made that the fog bell on
her was not efficient.

The Court: Objection overruled.

A. There was only one fog bell on board the ship.

The Court: The same bell all the time?

A. Yes.

Q. By Mr. Adams: With respect to item 20 g.
“One mechanical fog horn.”

A. Yes, sir, we had that.

Q. With respect to item 20 h. “Basket or other
efficient signal for the purpose of indicating the side
of the fishing vessel approaching vessels may pass.”

A. Yes, sir, we had a black ball up, two feet in
diameter. [437]

Q. Item 22 d. “One efficient steering compass.”
Did you have a compass aboard the “Olympic”?

A. Yes, sir, we had two.

Q. Where were they located?

A. We had one at the forepart of the wheel aft,
and another standard compass.

Q. Were they both in operation?

A. Yes, they were in good condition.

Q. Item 24, “There shall be at least ten square
feet of deck space available for each person allowed
on board.”

A. Yes, sir, that was complied with.

Q. You made some change, did you, with respect
to the “Olympic”, after you received the specifica-
tion, in that regard? A. No. [438]

The Court: I understand these are specifications
put out for all fishing barges, are they not?

(Testimony of Joakim M. Anderson.)

Mr. Adams: That is correct.

Mr. Cluff: All pleasure barges, of any kind, fishing barges, and so forth.

The Court: There is no claim that this boat was overcrowded on that particular morning?

Mr. Adams: No, that is very true.

Q. Item 26, "A log book shall be kept in which a daily record of the number of persons on board during the day shall be entered." Did you maintain a log book? A. Yes.

Q. That sank with the barge, did it?

A. Yes.

Q. Item 30, "Spaces containing operating boilers or machinery located below the main deck shall be provided with suitable bulkheads, and if wood, shall be sheathed with insulating material covered with not less than 18 gauge galvanized iron." Did you have machinery located below the main deck?

A. Yes, sir, and that was protected by an iron bulkhead that used to be in the ship before.

Q. Item 32, "All bilges, holds, compartments, etc., shall be free of all rubbish, waste, oil, etc."

A. Yes, sir.

Q. You testified to what you did have in the hold. Did [439] you have anything else in the hold?

A. It was all clean sand.

Q. There are a series of specifications relating to fire alarm system, and one of those is "A general alarm system operated manually from a central station." Of course, you had no such system, did you?

A. No.

(Testimony of Joakim M. Anderson.)

Q. Item No. 34, "Approved lifeboats with suitable launching arrangements and approved life rafts or buoyant apparatus, shall be carried sufficient to provide accommodations for all persons on board. Fifty per cent of such accommodations may be lifeboats, and fifty per cent may be in life rafts or buoyant apparatus."

A. We had a 22-foot lifeboat on board; also a skiff; had 300 life preservers; four ring buoys; four fire axes.

The Court: We did not have a fire here.

A. This is just the lifeboat.

Q. By Mr. Adams: Your lifeboat had a capacity of 20 people?

A. Yes.

Q. Your skiff would hold how many?

A. About four.

Q. The only other life saving equipment you had aboard were life preservers?

A. Life preservers.

Q. You had no life rafts or buoyant apparatus?

[440]

A. No, sir.

Mr. Cluff: May I interrupt to ask a question: You had rings? A. Yes.

Q. Ring buoys? A. Yes.

Q. How many?

A. Four; two with lights.

Q. In various parts of the ship?

A. Yes, two in the after quarter, and two in midships forward.

(Testimony of Joakim M. Anderson.)

Q. By Mr. Adams: Under the title "Manning", item 37: "A sufficient complement of licensed officers and certificated seamen, including lifeboat men, shall be carried as may be required to adequately deal with any emergency that may arise, and a licensed deck officer shall be in command of the vessel." Of course, you did not comply with that, did you?

A. No, sir.

Q. 38: "Minimum crew while vessel is at anchor with persons other than crew on board: 1 licensed master, 1 licensed engineer. Sufficient certificated lifeboats to adequately launch and man all life-saving equipment, 65% of which shall be able seamen." Of course, you did not comply with that, did you?

A. No. That is the question, that it could not be done [441] in this business.

Q. There are some general specifications, which are incorporated in item 40, 41 and 42. There were no changes made with reference to those general regulations, were there—changes in the "Olympic", after you received these specifications?

A. No, sir.

Q. Now, Captain Anderson, after the collision, and after the barge sank, you arranged for a diver to go down and examine the wreck, did you not?

A. Yes, sir.

Q. Were you present at the time he made his dive?

A. No, we had to go back in; we went out there

(Testimony of Joakim M. Anderson.)
that morning, but we did not stay until he went down and came up again.

Q. On how many occasions did he go down, do you recall?

A. I think only once. He may have gone down twice, but I wouldn't say for sure.

Q. It is my recollection that he went down one day, and then went down another. Is that right?

A. He might have done that. I was out there the morning he went down to look for bodies.

Q. You received a report from him, did you not, Captain?

A. No, I did not receive a report.

Q. The Hermosa ordered the diver to go down, did it not? A. Yes, sir. [442]

Q. And you are president of the Hermosa?

A. Yes.

Q. You did that?

A. Yes, I told him.

Q. Didn't the diver make a written report, concerning his findings? A. No, sir.

Q. You are sure of that?

A. Not to me; I didn't receive any letter.

Mr. Adams: Mr. Cluff, may I ask if you have any diver's report?

Mr. Cluff: I have never seen one, Mr. Adams.

Mr. Adams: The reason I stated that, if the court please, was that during the A Board hearing Mr. Nix, who represented the Hermosa at the time, stated that a diving report would be furnished to

(Testimony of Joakim M. Anderson.)
the A Board, and I would be furnished with a copy.
I have never received it.

Mr. Cluff: You will have to pick on Mr. Nix.
I never saw it.

The Court: Where is your diver?

Mr. Adams: I don't know. What diver did you employ, Captain?

A. What is his name again now?

Q. By Mr. Adams: Was he with Hull, Smale & Robinson?

A. That is right, Hull, Smale & Robinson. Robinson is the fellow that limps a little. [443]

Q. He was their regular diver?

A. I don't know. He did the diving.

Q. He was the diver that Hull, Smale & Robinson regularly employed? A. Yes.

Mr. Adams: To short-cut it, I was going to ask the Captain what report the diver made, either in writing or verbally.

Mr. Cluff: Go ahead.

The Court: Where is that admissible under the hearsay rule?

Mr. Adams: It might be subject to that.

The Court: I think you had better get your evidence in the right shape. There has been a lot of criticism as to hearsay evidence around here, and then you turn around and want to do the same thing, and I am going to stop you.

Mr. Adams: I was not going to do it unless the others joined with me in my efforts.

(Testimony of Joakim M. Anderson.)

Q. Now, Captain,—I don't know how far we got into this subject the other day; I might have to repeat one or two questions—were you aboard the "Olympic" when a coast guard officer boarded her, some time in May or June? A. Yes, I was.

Q. Do you remember that officer's name?

A. Yes, I do.

Q. That was Mr. Moynahan, was it? [444]

A. No.

Q. Was it Lieutenant Shoemaker?

A. No, it was the Calhoun—

Mr. Cluff: May I suggest the name to you?

Mr. Adams: Yes.

Mr. Cluff: Reeder.

A. Yes, John Reeder.

Q. By Mr. Adams: What coast guard vessel was he from?

A. The "Calhoun."

Q. Were you there when someone from the "Hermes" boarded her?

A. No. I was on board twice, I think, when Mr.—what is his name again—Reeder; that is right.

Q. You heard about an officer from the "Hermes" boarding the "Olympic", did you not?

A. No, sir.

Mr. Montgomery: I object to that as hearsay.

The Court: It has been answered.

Q. By Mr. Adams: There was no report to you from the "Hermes"?

A. No, sir, none whatsoever.

(Testimony of Joakim M. Anderson.)

Q. When you were not aboard the "Olympic", who was in charge of the "Olympic", during May and June?

A. A master by the name Pecar was aboard at that time.

Q. How do you spell his name?

A. P-e-c-a-r, Pecar. [445]

Q. How long did he remain in the employ of the Hermosa?

A. He was about three months out there.

Q. He was not there at the time of the collision?

A. No, sir, he left before the collision.

Q. He was in full charge when he was there, when you were away from the barge?

A. Yes, sir.

Q. It is a fact, is it not, Captain, that you were notified by the coast guard to remove yourself from that anchorage ground? A. No, sir.

Q. It is a fact, is it not, that the Hermosa Amusement Company, or some representative of that company, was notified to remove the "Olympic" from that anchorage? A. No, sir.

Mr. Cluff: Do you expect to prove that, Mr. Adams?

Mr. Adams: I have already proven it.

The Court: Where?

Mr. Adams: In the deposition.

The Court: Of whom?

Mr. Adams: Moynahan, for one, if the court please.

(Testimony of Joakim M. Anderson.)

The Court: You will have to get more proof than that, so far as this court is concerned.

Q. By Mr. Adams: Have you ever had any discussions with the coast guard officers about the "Olympic" being [446] anchored there, prior to the collision? Yes, I did.

Q. With whom?

A. With Reeder. He was the only one that I met when I was out there. In fact, Lansburgh looked over the ship, to see how things were running, and Reeder came aboard again.

The Court: Mr. Adams, Mr. Moynahan didn't testify he was told to remove these boats. His testimony was that he talked to somebody on board the boats, and told them they were dangerously close to the lane of travel.

Mr. Adams: I don't recall exactly what he testified along that line.

The Court: I read his testimony this morning. As I recall, he did not make any statement that he ordered anyone to move any of the boats away.

Mr. Adams: The court might be right. I haven't read this for several days, and I just read it very hurriedly once.

Q. Let me ask you this, Captain Anderson: Was it ever brought to your attention, as president of the Hermosa, or as Captain of the barge, that any coast guard officer ever informed the Hermosa, through one of its agents, that the "Olympic" was anchored in a dangerous place while she was anchored there at Horseshoe Kelp?

(Testimony of Joakim M. Anderson.)

A. None whatsoever.

Q. None whatsoever? [447]

A. No, sir.

Q. Were you in the city during the latter part of May; that is, in this vicinity?

A. I can't recollect that. What day?

Q. Let us say since May 10th, until the end of that month. A. I couldn't answer that.

Q. You might have been out of the city?

A. I might have been.

The Court: Here is the testimony. It says "We made our boarding in the routine manner, inspecting all the equipment, and so forth. In the course of our conversation with the person in charge we informed him that we thought they were anchored in a very dangerous place." That is his testimony.

Q. By Mr. Adams: Do you recall, Captain, when someone boarded the "Olympic" and made an inspection of the equipment aboard the "Olympic", some time in the latter part of May, or the first part of June, one of the coast guard boats?

A. No, I was only there when Reeder was there. He was the one who inspected all the equipment, and I think he went over everything that was there, and found it satisfactory.

Mr. Adams: I move that the latter portion be stricken, if the court please, as non-responsive, and hearsay.

The Court: It is stricken.

Q. By Mr. Adams: You have no recollection of

(Testimony of Joakim M. Anderson.)

any [448] officer making even a routine inspection in the latter part of May, or the first part of June?

A. No, sir.

Q. Captain, during the latter part of May and the first part of June, was Mr. Greenwood employed aboard the barge?

A. He was, but Pecar was in charge then.

Q. Was Mr. Culp employed aboard the barge at that time?

A. I don't remember, although he might have been; but I doubt it. I think he came later on.

Q. Was Mr. Karsh operating a concession aboard the barge at that time? A. Yes, sir.

Q. Have you ever seen Mr. Greenwood down below the main deck, in the hold of the "Olympic"? I take it he had occasion to go down there sometimes in the pursuit of his duties?

A. Yes, he did go down once in awhile, to oil up the engine.

Q. You have seen him down there, have you?

A. Yes.

Q. The entire open hold would be visible to him, would it not?

A. No, you can't see from one end of the ship to the other in tween decks. There is a bulkhead, you know.

Q. Did you ever have occasion to go down to the lower hold, where you could see the entire lower hold? [449]

A. We never go down to the lower hold. I am talking about the tween decks.

(Testimony of Joakim M. Anderson.)

Q. From between decks can you see into the lower hold?

A. No, only by removing planks.

Q. Did you ever adjust your ballast, after you anchored out there?

A. She was well stowed when she was put in.

Q. Is your answer that you never did adjust your ballast? A. That is right.

Q. Do you have any recollection of Mr. Greenwood ever going down into the hold of the "Olympic"? A. No.

Q. What about Mr. Culp, do you have any recollection of his going down there?

A. No; he has no business down there.

Mr. Adams: Nothing further at this time, if the court please.

(Short recess.) [450]

Mr. Adams: If the court please, I have a witness who is employed, and if there is no objection if we put him on now we could finish with him before noon and he could return to his work, if I might put him on out of order.

The Court: All right.

Mr. Cluff: No objection.

The Court: No objection. You may step down, Captain.

Mr. Adams: Mr. Liddell, please. [451]

FRANK LIDDELL,

called as a witness on behalf of respondents, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. Frank Liddell.

Direct Examination

Q. By Mr. Adams: Mr. Liddell, what is your occupation? A. Boatman.

Q. You now operate a water taxi, do you not?

A. That is right; yes, sir.

Q. Have you had much experience around boats?

A. Well, all kinds for several years.

Q. In this harbor here?

A. Yes, sir; and Puget Sound.

Q. You recall the collision between the "Olympic" and the "Sakito Maru", do you not?

A. Yes, sir.

The Court: Speak up so they can follow you.

Mr. Adams: Speak up a little louder, please, Mr. Liddell.

Q. On that day you were employed as a deck hand on the tug "Ray R. Clark", were you not?

A. That is right.

Q. And that tug went out to the "Point Loma" that morning for the purpose of towing the "Point Loma" in, did she not? [452]

A. That is right.

Q. You were aboard at that time?

A. Yes, sir.

Q. Will you describe the condition of the weather

(Testimony of Frank Liddell.)

as you proceeded on the "Clark" toward the "Point Loma", and tell us, first, about what time that was?

A. Well, it was right after daylight in the morning we went out for the "Point Loma". We had no compass that was any good, so we just had to guess our way out there. We had an old Navy type compass. So we was running out and we missed it. So Ernie Judd and this deck hand could tell by the sound of the "Point Loma's" bell which was the "Point Loma". That is the way we found it.

Q. I see.

A. We couldn't rely on our compass at all. Any-way, there was a heavy ground swell and it was foggy.

Q. What time did you go out?

A. Well, it was right after daylight. I don't remember the exact time. I think we started some time along 5:30 in the morning or 6. I don't remember the exact time.

Q. Do you have any recollection about what time it was when you arrived?

A. It was somewhere around 7 o'clock.

Q. Somewhere around 7 o'clock. When you did arrive at the "Point Loma" did you remain aboard the tug?

A. I did. I put Mr. Judd and Bill Collins off, and [453] his men off, on the "Point Loma", and I didn't lay alongside because there was such a ground swell running the tug was just beating itself to pieces against the gangway there.

Q. So where did you lie?

(Testimony of Frank Liddell.)

A. I went around and lay off his port bow.

Q. Off the port bow. About how far were you off the port bow?

A. Possibly 75 or a hundred feet.

Q. You were not anchored, were you?

A. No, sir; I was just laying there adrift.

Q. In what direction was the swell running that you spoke of?

A. It was a southwest swell, a heavy swell.

Q. Coming from the southwest?

A. The swell was coming from the southwest; that is right.

Q. I would like to show you a diagram that has been drawn, which is "Olympic" 7—no; I am sorry. This is not it.

The Clerk: Is this the one you mean?

Mr. Adams: "Olympic" 4.

The Court: 4.

Q. By Mr. Adams: You will see three objects marked on this diagram which are supposed to represent the relative positions of the "Rainbow" barge, the "Olympic" and the "Point Loma". Do those positions accord with your own [454] recollection of how the barges lay that morning?

A. That was right, but it seems to me you got the "Olympic" to far ahead there. She should be about a half a ship's length back to be in the course that she was laying on as that steamer came to her.

Q. When you say "back" you mean about—

A. Should be astern more.

(Testimony of Frank Liddell.)

Q. Should be astern about a half length?

A. The diagram, according to my compass—I say that the compass I had on there wasn't reliable, nevertheless, you could take a bearing on it. The "Olympic" is too far ahead there.

Q. Too far to the right or too far to the left?

A. Too far ahead.

Mr. Cluff: To the west he means to say.

A. Too far to the southwest.

Q. By Mr. Adams: How far back do you think she should be?

A. If you put the bow of the "Olympic" where that "Y" is that would be more on the course where she was laying.

Q. I see. That should be moved back there, in your opinion?

The Court: About half way?

A. About half way back is correct.

Q. By Mr. Adams: There is an object on this diagram which is supposed to represent the "Ray R. Clark". Does that [455] represent the position of your tug as you lay off the "Point Loma's" bow?

A. That would represent it right there and the "H-10" water taxi laid outside me there yet.

Q. In other words, it is your opinion that the object marked for the "H-10" is the position of your tug? A. That is right.

Q. And that the "H-10" lay between you and the "Olympic"? A. That is right.

Mr. Adams: I see. I don't think it is necessary, perhaps, to destroy all the drawings on this diagram.

(Testimony of Frank Liddell.)

The Court: No.

Mr. Adams: But I would like to draw a line from the object previously indicated to mark the "H-10" and say "Ray R. Clark by" this witness's name; and I will so do if there is no objection.

The Court: He corroborates the testimony that was given as to the location of those two boats.

Mr. Adams: No, if the court pleases. He says that the tug "Ray R. Clark" should be shown to be in the position the little "H-10" is shown.

The Court: Oh, I misunderstood his testimony.

Mr. Cluff: He testified that the "H-10" was still outside the—

Mr. Adams: That is right.

Mr. Cluff: He simply wants to move a little broader on [456] the port bow.

Mr. Adams: He wants to move these vessels there so the tug is in the same position as the "H-10" is shown on this diagram.

The Court: All right.

Q. By Mr. Adams: That is correct, Mr. Liddell?

A. That is right.

Q. By Mr. Cluff: But the "H-10" was still outside of you? A. He was outside of me.

Q. By Mr. Adams: Now, I have marked the previous position for the "H-10" as "Ray R. Clark" position according to Liddell." Mr. Liddell, while you laid there aboard the "Clark" did you hear any whistles from a steamer or motor vessel?

A. Yes; they were both, using the proper fog signals.

(Testimony of Frank Liddell.)

Q. Don't tell us what you think was proper. Just describe what you heard, and then the court will have to determine whether they are proper or not; so just tell us what you heard.

A. Well, the fog signal is merely a prolonged blast on your siren or whatever you have.

Q. And you heard such a whistle, did you?

A. I had for several minutes before she ever hove into sight there.

Q. What did you do when you heard the first whistle? [457]

A. I happened to be laying there. I just kept listening for it after I knew there was a steamer coming.

Q. Did you take any bearing on that whistle?

A. Well, after several, and I just did, because if his bearing didn't change I knew that I was laying right in his path, and the "Olympic" was too, and naturally I began to watch and I knew something was going to happen, couldn't help it. [458]

Q. You did take a bearing on the direction that the whistle appeared to be coming from, in your best judgment, did you not?

A. That is right. Any time you are laying in fog and hear a whistle and you don't know where he is at, you take a bearing to see whether the whistle changes or not, whether the bow turns or not or whether it keeps on coming in the same bearing.

Q. Despite the fact the compass was faulty for navigating purposes, it would still serve the same purpose for taking a bearing, would it?

(Testimony of Frank Liddell.)

A. Absolutely.

Q. How many whistles did you hear from this same direction?

A. I heard 12 or 15 at least.

Q. Did you continue to note the bearing of those whistles as you continued to hear them?

A. Yes; because I was laying right where I was and I knew that I was laying right in his course. Naturally, it would be up to me to look out for him. I knew he was coming my way.

Q. By the Court: You heard from 12 to 15 of these signals? A. Yes, sir.

Q. And they were, in your estimate, approximately a minute apart? [459]

A. A minute apart; yes, sir.

Q. By Mr. Adams: Did the bearings of those whistles change in any respect?

A. They never changed. That is why I watched out for myself.

Q. Where did the sound of those whistles appear to come from with reference to the "Olympic" and where you lay? Can you indicate on this chart?

A. Well, they came right from the southeast, right that way.

Q. Right from the southeast?

A. Distinctly, the first whistle I heard, until the collision, they came from the same way and there was no change in the compass bearing at all.

Q. You took that bearing by the means of your compass, I understand?

(Testimony of Frank Liddell.)

A. That is right. I could look right at it there.

Q. Was the "Olympic" barge within the line of the bearing?

A. Well, he was right in the steamer lane.

Q. Was the "Olympic" barge right in the line of your bearing with this sound?

A. That is right.

Q. Did you continue to watch in that direction then? A. Yes, sir.

Q. What did you see? [460]

A. Well, I could tell the steamer was going to hit the "Olympic" because of the bell—whatever was ringing the bell started to hollering at the people on the steamer, you see, and I called Leonard Smith's attention to it. I said, "Look, Smithy!" About the time he looked around, why, he hit her.

Q. What did you see, Mr. Liddell, when you first saw the "Sakito Maru"?

A. I seen her bow coming up and I seen her come right in and knock her mast down and knocked her broadside. I went around to the "Point Loma" and picked up Mr. Collins and Mr. Judd, and by the time I got around to looking again I saw the "Olympic" mast sticking up, the stump, that is about all I saw.

Q. From the time you first saw the "Sakito" until she struck the barge did she appear to change her course in any respect?

A. No. It was not over 25 feet from her when I first saw it.

(Testimony of Frank Liddell.)

Q. She was very close to the barge when you first saw her? A. That is right.

Q. About 25 feet distant?

A. Well, I had time to tell Smithy in the "H-10" to look; and when he turned his head, why, she hit. That is the first I saw it. I knew where it was going to hit [461] because I heard the people yelling at the people on the steamer.

Q. But you were watching that direction, expecting to see a vessel come through the fog from that direction, is that right?

A. That is right. I knew they was coming and I could hear the whistle of it.

Q. Were you watching in that direction when you first saw the "Sakito"? In other words, were your eyes focused in that direction when she came into view?

A. That is right, because something seemed to tell me there was going to be a collision. I don't know how it is, and something told me to watch, so I did.

Q. You made some mention of the fact that the barge was on the steamer lane. Vessels pass those barges frequently, do they?

A. That is right. That has not been the first collision they had out there.

Q. Of a barge?

A. A steamer hit a fishing boat and knocked half the passengers in over there. Horseshoe Kelp runs there for a mile and a half and they all get

(Testimony of Frank Liddell.)

out there and anchor there, and it is right directly in the steamer lane. So that is not the first time that happened out there. There has never been a disaster of that magnitude before, but it is not the first time it happened. [462]

Mr. Adams: No further questions.

Cross-Examination

Q. By Mr. Cluff: What other collision do you know of that took place out there?

A. Well, the "Wolfman" got hit out there one time that I knew of and a steamer knocked half of the people overboard. I don't remember the name of the steamer but I remember the "Wolfman" was the one that got hit. For any more data on it you can go to Joe Hornshell that owned the "Wolfman" at that time and he will tell you about it.

Mr. Cluff: May I have the answer?

(Answer read by the reporter.)

Q. You have been around the waterfront here a good many years, Mr. Liddell?

A. Oh, a few years; yes.

Q. And, I believe, are quite familiar with the Horseshoe Kelp? A. That is right.

Q. For quite awhile? A. That is right.

Q. There have been fishing barges out there for years, haven't there? A. Yes, sir.

Q. All sorts of small craft?

A. All types. [463]

Q. All types, every day during the season?

A. That is right.

(Testimony of Frank Liddell.)

Q. Commercial fishermen?

A. No; never a commercial fisherman.

Q. You never did see commercial fishermen out there?

A. No; I never did do it. I seen commercial fishermen out there. If you mean if I fished commercially, no.

Q. I didn't ask you if you fished commercially, but if commercial fishermen didn't fish out there on Horseshoe Kelp? A. Yes; lots of them.

Mr. Adams: If the court please, may my same objection run to this line of questioning as I have previously voiced to the other witnesses?

Mr. Cluff: It is cross-examination now.

Mr. Adams: Well, it still doesn't make it competent, relevant or material, if the court please.

The Court: It is the same question and I am willing to have your objection. As a matter of fact, it is purely cumulative.

Q. By Mr. Cluff: Live bait boats and everything else have been out there for years, is that right? A. That is right.

Q. Now, you didn't see the "Sakito", that is, you did not actually see the ship until she was about 25 feet away from the side of the "Olympic", just a moment or two before the crash? [464]

A. Before it hit; that is right.

Q. And you heard a whistle off to the southward? A. Southeast.

Q. To the southeast? A. Yes.

(Testimony of Frank Liddell.)

Q. That is about all you can say, that it came somewhere from the southeast, isn't that right?

A. Came right on the same bearing all the time.

Q. Mr. Liddell, will you tell the court how you take a compass bearing on a noise?

A. Certainly. All you have to do is to look at the binnacle, take a look to see which way it comes from and you can tell if it changes.

Q. Can you tell a sound within one point of the compass?

A. One point, yes; but not one degree.

Q. Can you tell it within 8 points of the compass? A. Yes.

Mr. Cluff: Well, you ought to get signed on somewhere.

The Witness: Well, I am.

Mr. Adams: Just a minute. If the court please, I object to this argument. It is argumentative.

The Court: It is.

Mr. Cluff: I should not have made that statement. I am sorry and I withdraw it.

The Court: It will be stricken.

Mr. Cluff: That is all, Mr. Liddell. [465]

Mr. Adams: That is all, Mr. Liddell.

Mr. Black: I have a question.

Cross-Examination

Q. By Mr. Black: While you were lying there did you hear the bells of the "Olympic" being rung?

A. Yes; I heard proper fog signals by both.

(Testimony of Frank Liddell.)

Mr. Black: I move that the answer "proper" be stricken.

Q. By the Court: Well, you heard the same kind of signals at about the same intervals from both the "Sakito Maru" and also from the "Olympic"?

A. And from the "Olympic"; yes, sir.

The Court: All right.

Mr. Black: That is all.

Mr. Cluff: That is all.

Mr. Adams: That is all right, Mr. Liddell. [466]

Mr. Cluff: Do you want Captain Anderson back? I wonder if before I put him back on I can recall Mr. Stiles for just one question that was suggested to me during the recess?

The Court: All right.

STANFORD ROBERTS STILES
recalled.

Further Direct Examination

Mr. Cluff: Mr. Stiles, you have already been sworn.

Q. Mr. Stiles, you knew the "Olympic" when she was laying at Hermosa Beach?

A. Yes, sir.

Q. How far from the dock or your landing dock was she lying?

A. Right close to a mile.

(Testimony of Stanford Roberts Stiles.)

Q. About a mile? A. Yes, sir.

Q. Did you ever hear her bell ringing while you were on the dock?

A. Yes, sir; on various occasions.

Mr. Adams: Well, now, just a minute, if the Court please.

Mr. Cluff: That is all.

Mr. Adams: I object to the answer and move it be stricken upon the grounds it is incompetent, irrelevant and immaterial, no proper foundation laid.

The Court: Overruled. [467]

Mr. Adams: No showing that the conditions under which the bell was heard at that time were at all comparable to the conditions.

The Court: I think Captain Anderson testified he had the same bell all the time.

Mr. Adams: I mean there is no showing of conditions of weather and wind, etc.

The Court: That will have to be taken into consideration. That goes to the weight of the testimony.

Mr. Adams: Well, I think it goes to the foundation, if the Court please.

Mr. Cluff: That is all.

Cross-Examination

Q. By Mr. Adams: Mr. Stiles, have you ever had occasion when the wind was blowing in a certain direction and you were closer to the "Olympic" than one mile, when you couldn't hear her bell when it was being rung?

(Testimony of Stanford Roberts Stiles.)

A. Yes; with an engine running on the boat, if that is what you have reference to.

Q. Well, without any reference from engine noise.

A. Have I been closer than one mile and not heard the bell?

Q. Yes; and you knew or learned later that she was ringing her bell?

A. Never to my—never have I been closer than that [468] and not heard it.

Q. It is a fact, is it not, that the direction of the wind and many other factors influence whether you can hear a bell or signal in fog?

A. That is very true.

Mr. Adams: No further questions.

Mr. Cluff: That is all, thank you, Mr. Stiles. All right, Captain. [469]

JOAKIM M. ANDERSON

recalled.

The Court: May I make inquiry? Your first witness testified that the ground swells were coming in, I believe. Would that be indicative of the way the wind was blowing?

Mr. Adams: Well, no; not necessarily. In fact, we will show from our witnesses that the wind was blowing in practically the opposite direction of the swells. It was a light wind.

(Testimony of Joakim M. Anderson.)

Mr. Cluff: The log shows northeast, coming from the northeast.

Mr. Adams: But the swells were coming from the southwest toward the northeast.

Mr. Cluff: Well, your log shows the wind force 1 from the northeast. That is true, isn't it?

Mr. Adams: That is right. That is why I say the wind was blowing in the opposite direction from the swells.

Mr. Cluff: The wind would be carrying it out to sea.

The Court: Wouldn't that have the effect of making the fog signals on the "Sakito Maru" more audible to the "Olympic II" than the signals on the "Olympic II" to the "Sakito Maru"?

Mr. Adams: Well, the wind, the direction of the wind, according to our computations aboard the "Sakito", the wind was blowing in a southwesterly direction. That would be away from the "Sakito Maru". It would be in a southwesterly direction. She was approaching in a general southeasterly direction [470]

The Court: All right.

Mr. Adams: May Mr. Liddell be excused and no further questions?

The Court: Yes.

Further Cross-Examination

Q. By Mr. Cluff: Captain, Mr. Adams has spoken of the ballast in the "Olympic". How near did that ballast come to loading her to her cargo capacity?

(Testimony of Joakim M. Anderson.)

A. Just about half of the capacity that she will hold, going to sea. She should carry about 3000 tons dead weight, between 2700 or 3000.

Q. All right. What was the purpose of having ballast on the "Olympic"?

A. The ballast was put on board to keep the ship from rolling, so that people would not get seasick, and to bring her down to the level where everybody could fish in such a way that they could get in their fish.

Q. Did you ever hear of any ship that would lie at sea there at anchor without ballast in it?

A. No, sir.

Q. What would happen if you had the ship without ballast?

A. Well, here is a ship like the "Olympic", she always had a standing ballast, what we call standing ballast, about two or three hundred ton, which was in the ship when I bought her, and then I put twelve more hundred ton in her and that is [471] why I could figure she ought to have that much ballast.

Q. Without ballast she wouldn't ride, would she?

A. She will tumble over with all the masts and rigging on her.

Q. Answer these questions as quickly as you can because I want to get through this quickly here.

Q. You acquired the "Olympic" in 1937, overhauled her in San Francisco, and you brought her down here in the spring of 1939?

(Testimony of Joakim M. Anderson.)

A. That is right.

Q. Did you have a certificate of inspection when she came down? A. Yes, sir.

Q. Issued by what office?

A. San Francisco office.

Q. That was a certificate as a seagoing barge?

A. Yes, sir.

Q. And when you got her down here did you contact the local inspectors? A. I did.

Q. With reference to the inspection of the barge?

A. I did, and they demanded I surrender the certificate and Captain Kennedy got it.

Mr. Adams: Just a minute, Captain. I object to that upon the ground it is not the best evidence.

Mr. Cluff: Do you want me to produce the records here? [472]

The Court: The objection is good. And I don't know what materiality it is.

Mr. Cluff: Counsel has attacked the "Olympic's" seaworthiness. We propose to show by this evidence that the "Olympic" has complied, as best it could, with every rule and regulation required of her.

The Court: That does not make any difference what they attempted to comply with. It is a question as to what the law was on that date and whether or not she had complied with the law. Now, she did not have any accidents except the one—

Mr. Cluff: True.

The Court: On September the 4th. The con-

(Testimony of Joakim M. Anderson.)

dition of the vessel at that time and the status of the law is what we are interested in here.

Mr. Cluff: Very well. Now, Mr. Adams, then I invite from you a stipulation that this instrument, a copy of which I am showing you and which I believe I received from your office—you were kind enough to give me a copy—which is the findings of the A Board, with a letter from Director Roper to the Secretary of Commerce—

The Court: Why am I interested in the findings of the A Board, gentlemen?

Mr. Cluff: I don't think you are, except to follow the letter. The letter here recites—

Mr. Adams: Now, just a minute, Mr. Cluff.

The Court: Gentlemen, just a moment. As I understand, [473] the situation is this: It does not make any difference what was required of that boat if they had no legal right to require it. In other words, the status of the law at that time. Now, because some agency either enforced or did not enforce the law is immaterial. It is a question of what the law was at the time of this accident, what the law required, the nature of the inspection.

Mr. Cluff: I think it cuts a little deeper than that, your Honor. May I state my position here? As far as the statutory law is concerned, except for the purely technical matter of a certificate of inspection, the "Olympic" complied with it. Now, the inspectors had required her, by their order, to make certain structural changes and things of that character.

(Testimony of Joakim M. Anderson.)

The Court: But your question is: Did they have a right to require those things?

Mr. Cluff: And furthermore, the question of whether they had put them in effect yet. Mind you, these inspector's rules and regulations have the force, when they get in, almost of a statute; so it is very important to ascertain whether they regarded those, whether they were enforcing those, whether they were requiring it. And I propose to show by this letter from the director that, specifically with reference to the "Olympic" and all the others, the Department had decided that they would allow a reasonable time to comply with these regulations, and that time—— [474]

The Court: Who is that letter from?

Mr. Cluff: That letter is from Commander Field, Director of the Bureau of Navigation to the Secretary of Commerce.

Mr. Adams: If the Court please, I have a letter en route here from Captain Fisher which I intend to use as the basis for taking his depositions, if the statements of Captain Anderson are allowed to remain, that there was a certain excuse given to the "Olympic" for compliance; to the effect that there was no relaxation in those orders whatsoever. And I will ask leave of the Court to take the deposition of Captain Fisher, who is the surviving inspector for the Bureau of Marine Inspection and Navigation for this district. I think, in view of the statements made by Mr. Cluff——

(Testimony of Joakim M. Anderson.)

The Court: Just a moment. You have introduced a letter here where an appeal was made and signed by Mr. Field as director.

Mr. Adams: That is correct.

The Court: As I understand, the Department of Commerce promulgates certain rules and regulations.

Mr. Adams: That is correct.

The Court: And there were certain rules and regulations claimed, anyhow—I haven't seen them yet—for the requirements of these fishing barges and boats of this type. If those rules were in effect and there was a compliance with the statute, why, that is the situation in which that boat was operating. On the other hand, if the directors suspended the [475] operation of those rules for a definite period or an indefinite period, that presents a different picture.

Mr. Adams: That is very correct, and Captain Anderson said that they were given some sort of a suspension or exemption with respect to one item: I think it was the life boat equipment; and I intend to prove, and I ask leave to take the deposition of Captain Fisher to prove, that there was no relaxation in these orders and specifications in any respect whatsoever.

The Court: I know, but the one to determine whether there was or not was the department from which those rules emanated.

Mr. Adams: I have introduced a letter from the

(Testimony of Joakim M. Anderson.)

director of that department, stating that the appeals were denied and that the orders were in full force and effect.

The Court: Because somebody told this man he did not have to obey them does not mean anything.

Mr. Adams: Then, I take it—

The Court: In other words, there will have to be something from somebody in authority in the way of a letter or a bulletin of some kind. For instance, their contention is that they were to have a reasonable length of time to comply with these rules. I believe that is the contention.

Mr. Cluff: Yes.

The Court: Now, there has to be something. Just a word of mouth that some Coast Guardsman or somebody said that they didn't have a comply with the rules would not be binding, because that is beyond their authority. [476]

Mr. Adams: I might state, if the court please, that this letter that Mr. Cluff is attempting to introduce now contains some statement to the effect that the department, because there was some question about their jurisdiction, did not enforce the rules and regulations, or enforce the statute, or whatever it was, immediately, but gave them some time within which to comply. This controversy has been going on for several years.

The Court: You need not tell me anything about it because I was United States Attorney and I had it in my lap up there. We had it in our lap, so I

(Testimony of Joakim M. Anderson.)

know something of the controversy. And I have even discussed it with Captain Field in Washington—I think it is Captain Field.

Mr. Cluff: Commander Field.

The Court: Commander Field in Washington and had conferences on this thing; and I know something of the background of this dispute.

Mr. Adams: Now, this letter is therefore subject to ambiguity, if it is allowed to be introduced, as to what the writer of that letter was talking about when he said that they were allowed a reasonable time.

The Court: That is the letter from whom?

Mr. Cluff: That is from Commander Field to the Secretary of Commerce, dated March 24, 1941.

Mr. Adams: This controversy began, as the court recognizes, many years ago, and they did let things go in [477] status quo for about two years or more, and then finally they decided to exercise what they finally concluded was their power; and they sent out these specifications and there has been no relaxation of those orders since that date; and we will so prove by Captain Fisher.

The Court: Is not Commander Field the superior officer of Captain Fisher?

Mr. Adams: The whole point is that the letter of Commander Field does not show that there has been a relaxation. It does make a statement—

Mr. Cluff: Let me give the court the letter and he can determine whether there is a relaxation.

(Testimony of Joakim M. Anderson.)

Mr. Adams: I will ask the court to read the letter and pass upon my objection.

The Court: Why not take the deposition of Commander Field and get the real start of the controversy?

Mr. Adams: That is all right. I am willing to do that. I am perfectly willing to do that.

The Court: Of course, that should be a definite way. The fact is, a letter from Commander Field to the effect that there was no relaxation of that, you should be able to introduce that without the necessity of taking the deposition.

Mr. Cluff: As far as the original letter is in the files of the Secretary of Commerce, I am just simply taking Mr. Adams' story that this letter I have here is a true copy. I got it from him. [478]

Mr. Adams: Well, I got it from Miss Phillips.

Mr. Cluff: All right. And so on up, the big bugs have bigger bugs. I don't care about putting the A Board rulings in. Put them in or not. Read this letter.

Mr. Adams: Let me read the letter. I haven't read it for a long time.

The Court: Maybe you will consent to it after you read it.

Mr. Adams: Maybe I will. (After perusing letter.) I will stipulate to that and I will point out to the court the—

The Court: There will be room for argument, gentlemen. I am going to get all your evidence in

(Testimony of Joakim M. Anderson.)
on this and then study it, and let you people do
your arguing of some of these facts orally or by
brief.

Mr. Adams: I will stipulate to simply the fact
that that is a true copy of a letter.

Mr. Cluff: A true copy of the letter from Com-
mander Field. Well, will you put it this way:—all
right; just that it is a true copy of the letter from
Commander Field to the Secretary of Commerce
which accompanied the report of the A Board .

Mr. Adams: That is right. And I object to it
as incompetent, irrelevant and immaterial.

Mr. Cluff: All right. I offer it in evidence as
the "Olympic's" next exhibit. [479]

Mr. Adams: I ask the court to read the letter
in connection with the letter to Mr. Lansburgh by
Commander Field in July of 1940.

The Court: It will be admitted.

OLYMPIC EXHIBIT No. 9

(Copy)

March 24, 1941

SAKITO MARU—OLYMPIC II

A7

Memorandum to the Secretary of Commerce
From the Director of the Bureau of Marine In-
spection and Navigation

(Testimony of Joakim M. Anderson.)

Attached is the report of the "A" Marine Investigation Board for the Pacific Coast with reference to their investigation into the collision which occurred on September 4, 1940, between the anchored American Fishing Barge "OLYMPIC II" and the Japanese Motor Freighter "SAKITO MARU" off the entrance to San Pedro harbor, Calif. As a result of the collision, the "OLYMPIC II" sank, with the loss of eight lives.

On page 4 of the findings and recommendations of the "A" Marine Investigation Board, it is stated:

"Some months previous to the disaster on September 4, 1940, the Bureau of Marine Inspection and Navigation had given the HERMOSA AMUSEMENT COMPANY notice of structural changes and additional equipment needed by the barge "OLYMPIC II" in order to make her reasonably safe for her employees and passengers. These changes and additions were never made."

For some time doubt had existed among officials of the Bureau and of the Department as to the right of the Bureau to inspect anchored barges of a type similar to the "OLYMPIC" and engaged in a similar business.

Officials of the Bureau and of the Department, therefore, met in conference, and it was decided that such vessels were subject to the inspectional jurisdiction of the Bureau. Thereafter the Bureau issued instructions covering the inspection of these

(Testimony of Joakim M. Anderson.)

vessels, and the owners were notified accordingly.

It was not deemed equitable, however, to require that the vessels immediately comply with the rigid requirements of inspection, and, therefore, the owners were given a reasonable length of time in which to comply with the requirements placed upon them. This was true in the case of the "OLYMPIC II".

The Bureau will take appropriate action on the recommendations of the Board, and I recommend that its report be accepted.

R. S. FIELD

Director

Att.

Accepted: /s/ ROBERT H. HINCKLEY

Acting Secretary of Commerce.

(cc: Miss Phillips;

Capt. Fisher, Alger)

[Endorsed]: Filed Sept. 18, 1941.

Mr. Adams: I would like to ask the court to read the letter previously introduced from Commander Field to Mr. Lansburgh in interpreting the letter which the court has just admitted.

The Court: Has that been introduced?

Mr. Adams: It has been introduced.

The Court: Oh, this is the one in the action on appeal?

Mr. Adams: That is right.

(Testimony of Joakim M. Anderson.)

The Court: I have read that.

Mr. Cluff: I am going to put in the appeal, so-called, just itself, just to complete the record.

The Court: I read the letter. I read it when it came in. I think it is a question of law that I will be interested in, even if they made the rules and regulations, and then if they had the force and effect of law, whether or not the director had authority to suspend their operations.

Mr. Adams: I think that would be a very pertinent point.

Q. By Mr. Cluff: Captain, do you recall, after these new rules were promulgated in June, 1940, you prepared in San Francisco an appeal from those rules? A. Yes.

Q. And I will show you a letter of July 9th, addressed [480] to Commander Field and bearing the typewritten signature of "S. Laz Lansburgh", attorney for Hermosa, and Captain J. M. Anderson? A. That is right.

Q. I will ask if you signed that letter?

A. Yes, sir.

Mr. Cluff: I will offer that letter in evidence.

Mr. Adams: That is objected to as a self-serving declaration; it is hearsay; it is incompetent, irrelevant and immaterial.

Mr. Cluff: I submit it may go in.

Mr. Adams: How could a brief advocating that the rules did not apply be material in this cause here?

(Testimony of Joakim M. Anderson.)

The Court: I can't see.

Mr. Cluff: Yes. And counsel has put in a letter denying the appeal. If the letter has any weight at all, you have got to know what the appeal was; otherwise, it might be an appeal from the requirement that they have 15 mess boys.

Mr. Adams: I think from the letter it is quite apparent what the appeal had reference to.

The Court: Mark it for identification. At this time I am going to deny its admission. Mark it for identification as a part of the record.

The Clerk: "Olympic's" 10.

OLYMPIC EXHIBIT No. 10

July 9, 1940

Commander R. S. Field,
Director Bureau Marine Inspection
and Navigation,
Department of Commerce,
Washington, D. C.

Dear Sir:

On behalf of my clients Captain J. M. Andersen, Master of fishing barge "Olympic II" and Hermosa Amusement Corporation, the owner of said vessel which is anchored off San Pedro, California, I hereby appeal from the decision and action of the local inspectors at San Pedro, California, requiring the subject barge to comply with the requirements

(Testimony of Joakim M. Anderson.)

set forth in the attached schedule, marked "Exhibit A" which is hereby specially referred to and by reference made a part hereof.

I believe that a resume of the history of this barge will be of interest: Prior to the year 1935 or 1936 we were advised by various agencies of the Federal Government that the barge did not require inspection and it is a fact that the Federal Government assumed no jurisdiction over the barge. Some time subsequent we were notified by the local inspectors that the barge required inspection. Pursuant to this notice we submitted the barge for inspection and complied with all orders issued by the local inspectors incident to the inspection and certification of the barge.

A certificate of inspection issued under date of April 8, 1938, was canceled and lifted by the local inspectors some time later in 1938, for the reason stated that the barge required a load line. Subsequently the local inspectors informed us that a load line was not required but they would not inspect the barge until requirements for equipment of various kinds, accommodations for persons on board and crew were promulgated.

In June 1940 we received a notice requiring various matters and things set forth in said "Exhibit A" hereto attached. Upon receipt of this notice we immediately contacted local inspectors for further information; following which we contacted the office of the Supervising Inspector in San Fran-

(Testimony of Joakim M. Anderson.)

cisco for the purpose of appealing from the action of the local inspectors. We were then informed that the Supervising Inspector was absent from San Francisco, and accordingly appointment was made with him for July 9th 1940.

The Supervising Inspector informed us that, except for some possible modifications with respect to "Olympic II" the requirements made by the local inspectors would stand.

We are appealing this matter to the Bureau because we feel that the requirements are onerous and cannot be complied with and will put us out of business.

It has been our practice and it is our intention to comply with the laws where possible, and we wish to point out that our barge has been inspected and certificated, while some of our competitors have refused and neglected to have their barges inspected, and nothing was ever done about it. This caused us very considerable expense.

You will see from "Exhibit A" that it is therein contended that Title 46 U. S. Code, Sections 395, 6, 7 and 8 require the various things specified in said "Exhibit A"; whereas the only equipment required by said sections is specified in Section 396, namely "at least one life boat, at least one anchor and suitable chain and cable and at least one life preserver for each person on board."

It is our contention that requirement of the other equipment set forth in "Exhibit A" is violative of

(Testimony of Joakim M. Anderson.)

the express provisions of Congress as enacted in said last mentioned Section.

The "Olympic II" is an iron vessel which is free from all leaks, all plates being in first class condition. The vessel is anchored off San Pedro breakwater about 3½ miles from the breakwater.

The expenditure necessary for compliance with the requirements of "Exhibit A" is prohibitory. The requirements for sea-going barges as set forth in the above numbered sections have been fully complied with.

Respectfully yours,

S. LAZ LANSBURGH,

Attorney for Hermosa Amusement Corporation and Captain J. M. Andersen

[Endorsed]: Filed Sep. 18, 1941.

Q. By Mr. Cluff: Captain, you have heard about this [481] lifeboat launching device. At the time of the collision was the same lifeboat launching device on that was on in 1937?

A. Yes, sir.

Q. That was approved by the local supervising inspector? A. Yes, sir.

Q. You received notice to that effect, did you?

A. Yes, sir.

Mr. Adams: Objected to upon the ground it is not the best evidence, incompetent, irrelevant and immaterial.

(Testimony of Joakim M. Anderson.)

Mr. Cluff: Well, let us give him the best evidence then.

Mr. Adams: Well, you might show it to me and then perhaps I would admit it.

Q. By Mr. Cluff: Do you happen to know Captain Fisher's signature, the supervising inspector? Will you stipulate that that is Captain Fisher's signature?

A. I couldn't—I presume that is.

Mr. Adams: I think it is.

A. I couldn't say to that.

Mr. Adams: I will stipulate to it.

Mr. Cluff: Offer it as the "Olympic's" next exhibit. Does the court care to look at it now?

The Court: After it is marked I will look at it.

Mr. Adams: Objected to as incompetent, irrelevant and immaterial, as not having any bearing upon the points involved out of the collision, since the letter was dated in [482] 1937.

The Court: I don't know whether it has or not. I am going to admit it.

OLYMPIC EXHIBIT No. 11

In Reply Refer to
File No. 7711

DEPARTMENT OF COMMERCE

Bureau of
Marine Inspection and Navigation
June 23, 1937

(Testimony of Joakim M. Anderson.)

Office of Supervising Inspector, 7th District
Room 14 Custom House
San Francisco, Calif.

Mr. J. M. Andersen, President,
Hermosa Amusement Corp.,
P. O. Box No. 437,
Hermosa Beach, California

Dear Sir:

Further reference is made to your letter of March 16, 1937, relative to the apparatus for handling the lifeboat on the fishing barge OLYMPIC NO. 2.

Please be informed that I gave this matter my attention and consideration, and also discussed it with the Local Inspectors at San Pedro. The Local Inspectors at San Pedro have informed me that they have approved the apparatus for launching the lifeboat which was installed on the barge OLYMPIC NO. 2.

If there is anything in the matter which is not concluded at this date, please so inform me.

Yours truly,

WILLIAM FISHER

Supervising Inspector,
Seventh District.

[Endorsed]: Filed Sep. 18, 1941.

Mr. Cluff: I don't think anything about the life-boat launching here has any materiality. It is un-

(Testimony of Joakim M. Anderson.)

der attack and I have got to do the best I can with it. I have no further questions of Captain Anderson.

Cross Examination

Q. By Mr. Black: How old were your life belts on the "Olympic"?

A. They happened to be just two years old. They renewed them all, bought all new life preservers.

Q. You bought them personally, did you?

A. From C. J. Hendrie; yes, sir.

Mr. Black: That is all.

Mr. Cluff: Nothing further, Captain. [483]

Mr. Adams: If the Court please, our captain is in this building at the office of the Immigration. He came in last night by airplane from Mexico and underwent certain routine immigration examination last night and also this morning. It seems that when entry is made from Mexico there is more to do about it than from any other country, and apparently there is some requirement that a bond be posted during his stay in this country, which is not unusual. And he is now in the building. We have not had time yet to make arrangement for the bond. It might be that the immigration authorities would permit him to come down here to this court and commence his testimony; but I don't know how we are going to bring him down here without making arrangements for the bond, unless the Court or someone contact the Immigration and see if he

might come down here and still remain in the custody of the Immigration.

The Court: You might step in to my secretary and have her get in touch with the Immigration office.

Mr. Adams: Thank you.

The Court: Mr. Briggs can attend to it.

Mr. Adams: The captain is the witness that we intended to have on hand now.

The Court: Have you any other witnesses at this time?

Mr. Adams: No; not right on hand at this moment. I fully expected that the captain would be free from his immigration examination at this time.

[484]

The Court: You might find out when he will be available.

Mr. Adams: Will the Court excuse me to speak to Mr. Briggs about that?

The Court: Yes.

(Short intermission.)

Mr. Adams: If the Court please, the party Mr. Briggs talked to over the telephone is taking it up with the Inspector in charge and will call back here in a few moments.

The Court: I think we should find out whether he is immediately available, and if he is not immediately available, when he will be.

Mr. Adams: That is what, apparently, we won't

know until the Inspector in charge makes the investigation. It was explained to him that we wanted him to come down and testify in court and they could make arrangements to keep him in technical custody until the bond was posted, and I think probably those are the arrangements that they will permit.

The Court: We will wait just a moment and see. How many more witnesses have you?

Mr. Adams: In addition to the captain, about five.

The Court: You had better have those available this afternoon. They should have been available this morning.

Mr. Adams: We thought we had the captain. Of course, the captain will take some time. We have to speak through an interpreter, if the Court please, and that always takes more time. [485]

The Court: Have you arranged for an interpreter?

Mr. Adams: Yes; I have.

Mr. Cluff: Is Mr. Bischof going to interpret?

Mr. Adams: Yes; if he is in the court room.

Mr. Cluff: That is another thing we can agree on then, is the competency of the interpereter.

Mr. Adams: Quite so. He was in the court room this morning and I think he plans to be back here at two.

Now, if the Court please, I might take this time to offer the depositions of Mr. Yokota, Mr. Kato, and Mr. Shimada. The Court has already read

those depositions. And with that offer I also wish to offer the exhibits which are attached to the depositions into evidence. [486]

SAKITO EXHIBIT No. F

[Title of District Court and Causes.]

DEPOSITIONS OF T. YOKOTA, G. KATO AND S. SHIMADA

Depositions of T. Yokota, G. Kato and S. Shimada, witnesses produced, pursuant to notices of intention to take depositions now on file in the above-entitled causes, on behalf of Respondent-Claimant-Petitioner and Cross-libelant Nippon Yusen Kabushiki Kaisya, now pending in said court, before Ross Reynolds, a Notary Public in and for the County of Los Angeles, State of California, in Suite 1100 Banks-Huntley Building, 634 South Spring Street, Los Angeles, California, on Wednesday, June 4, 1941, commencing at the hour of 1 o'clock p. m. [490]

Mr. Adams: Let the record show, Mr. Notary, that I have prepared in typewritten form, with several copies, a stipulation covering the depositions of the three witnesses to be heard today, and that these copies have been examined by counsel present. I will ask that the form of the stipulation

(Deposition of T. Yokota.)

as prepared by me submitted to counsel be copied into the record.

(The stipulation hereinabove referred to is as follows:)

It is Hereby Stipulated by and between all parties herein appearing or represented by counsel as follows:

1. That the depositions of T. Yokota, G. Kato and S. Simada, witnesses on behalf of the respondent, claimant, petitioner and cross-libelant, Nippon Yusen Kabushiki Kaisya, may be taken *de bene esse*, before Ross Reynolds, a notary public in and for the County of Los Angeles, State of California, at this time and place, to wit: 1:00 o'clock P. M., June 4, 1941, Suite 1100, 634 South Spring Street, Los Angeles, California, and thereafter continued from time to time as the taking of the depositions may be adjourned;

2. That the testimony and depositions of said witnesses may be taken in shorthand by said notary and shorthand reporter and thereafter transcribed into typewriting, under his direction, and filed with the clerk of the United States District Court, Southern District of California;

3. That the testimony and depositions of the said witnesses, when taken and transcribed, may, but need not be, [493] read or signed by the respective witnesses;

4. That all objections to the form and time of

(Deposition of T. Yokota.)

the notice of taking such depositions are hereby waived and that all objections to questions or answers are reserved until the trial, except objections to the form of a question, which shall be deemed waived unless noted at the time the question is asked;

5. That the testimony and depositions of such witnesses, when transcribed, may be offered in evidence by any party to any and all of the various causes pending in the United States District Court, Southern District of California, arising out of or in connection with the collision between the "Sakito Maru" and the "Olympic II" on September 4, 1940, with like effect as if the testimony and deposition of such witnesses had been taken separately in each of said causes;

6. That the foregoing stipulation shall apply to and include the limitation of liability proceedings commenced by the petitioner, Hermosa Amusement Corporation, Ltd., in the United States District Court, Southern District of California, numbered 1352-BH, and that the testimony and depositions of such witnesses may be considered as taken in such proceedings in the manner heretofore provided, to the same extent and with the same effect as if the respondent, claimant, petitioner and cross-libelant, Nippon Yusen Kabushiki Kaisya, were now a proper party litigant in such proceedings. [494]

Mr. Adams: I will ask now if that stipulation is agreed to by all counsel present.

(Deposition of T. Yokota.)

Mr. Cluff: So stipulated on behalf of the Hermosa Amusement Corporation and J. M. Andersen.

Mr. Black: So stipulated on behalf of Helen McGrath et al.

Mr. Scharf: So stipulated on behalf of J. Eldon Anderson.

Mr. Velpman: So stipulated on behalf of Elwood Johnson and Albertine K. Johnson.

Mr. Clough: So stipulated on behalf of the International Broadcasting Company and John Gilbert Montgomery, by his guardian ad litem, Marjerie L. Montgomery.

Mr. Eastham: So stipulated on behalf of Roger S. Culp.

Mr. Goldwater: So stipulated on behalf of Wilma Greenwood.

Mr. Lippert: So stipulated on behalf of Frank F. Mayo individually and as administrator of the estate of Roy A. Mayo, deceased.

Mr. Stearns: That stipulation is agreeable.

Mr. Briney: So stipulated.

Mr. Purpus: So stipulated.

(M. T. Bischof was sworn by the notary to act as English-Japanese interpreter.) [495]

T. YOKOTA,

a witness on behalf of the Respondent-Claimant-Petitioner and Cross-libelant Nippon Yusen Kabushiki Kaisya, being first duly sworn, testified, through the interpreter, as follows:

(Deposition of T. Yokota.)

Direct Examination

Q. By Mr. Adams: Mr. Yokota, will you state your full name, please?

A. Tokujiro Yokota.

Q. You are the chief officer, are you not, of the "Sakito Maru"? A. Yes.

Q. And you were the chief officer of that vessel on September 4, 1940, were you not?

A. Yes.

Q. What license do you hold?

A. First grade master.

Q. How long have you held that license?

A. From January, 1940.

Q. Prior to that time, did you hold a first officer's license? A. Yes; I did.

Q. And about what time did you receive that license? A. In 1932.

Q. Prior to the time that you went to sea, did you take [496] any training in navigation?

A. Yes; I did.

Q. What training did you take?

A. The Kobe Higher Nautical School.

Q. How long did you attend that school?

A. Four and a half years.

Q. Did you graduate? A. Yes; I did.

Q. After your graduation, what did you do?

A. I boarded a ship right away.

Q. And when was that?

A. In 1926.

Q. Have you been going to sea continuously since that time? A. Yes; right along.

(Deposition of T. Yokota.)

- Q. When did you first join the "Sakito Maru"?
A. In 1939; December 27, 1939.
Q. Did you join as first officer? A. Yes.
Q. And have you served in that capacity ever since? A. Yes.

- Q. When was the "Sakito Maru" launched?
A. In October, 1938.
Q. When did she enter upon her first voyage?
A. In January, 1939.
Q. Do you know her length over all? [497]
A. 154½ meters.

Mr. Adams: Gentlemen, I might save some time here by asking leading questions on these dimensions, if no one has any objection.

Mr. Black: No objection.

Mr. Cluff: We have no objection.

Mr. Purpus: No objection.

Mr. Clough: No objection on our part.

Mr. Velpman: No objection.

Q. By Mr. Adams: The length of the "Sakito Maru" between perpendiculars is 145 meters, is it not? A. Yes; that is correct.

- Q. And her breadth is 19 meters?
A. Yes.
Q. Her gross tonnage is 7,126.32 tons?
A. Yes.
Q. Are those metric tons?
A. Measurement tons.
Q. The net tonnage of the vessel is 3,900.09?
A. Yes, sir.

(Deposition of T. Yokota.)

Q. What compasses is the "Sakito Maru" equipped with?

A. A gyro compass and a magnetic compass.

Q. Where is the gyro compass located?

A. In the wheel house and on the compass bridge.

Q. That is the same place, isn't it? I mean the gyro compass. [498]

A. There is one in the wheel house and one on the compass bridge over the wheel house. We have two repeaters in the wheel house.

Q. Mr. Yokota, you have in the wheel house the gyro compass, do you not? A. Yes.

Q. And then you have one magnetic steering compass in the wheel house also, do you not?

A. Yes.

Q. And then the other magnetic compass that you speak of is on the compass bridge, is that correct? A. Yes.

Q. That is also the flying bridge, isn't it?

A. Yes.

Q. So you have three compasses in all, is that correct?

A. Do you mean magnetic compasses?

Q. Three in all, including the gyro compass?

A. We have a gyro with three repeaters and we have three magnetic compasses.

Q. You have already located two of the magnetic compasses. The third magnetic compass is on the poop deck, is it not?

(Deposition of T. Yokota.)

A. Yes; the poop deck, at the stern.

Q. What compass do you use for steering?

A. The gyro compass.

Q. Is there any correction of the gyro compass? [499]

A. No correction.

Q. Was there any correction as of September 4, 1940? A. No; there wasn't any.

Q. How many whistles is the vessel equipped with? A. Two whistles.

Q. What kinds?

A. One is a steam whistle and the other is an air whistle.

Q. On what voyage was the vessel engaged on September 4, 1940?

A. A New York voyage.

Q. Bound to what port?

A. From New York to Yokohama.

Q. On what day did the vessel sail from New York? A. August 21, 1940.

Q. The vessel came via the Panama Canal, did she not? A. Yes.

Q. What was the purpose of the vessel calling at Los Angeles Harbor?

A. For bunkers.

Q. For bunkers only? A. That is all.

Q. Do you know what the draft of the vessel was upon her arrival at Los Angeles Harbor on September 4, 1940?

A. The bow was 7.50 meters and the stern was 8.50 meters. [500]

(Deposition of T. Yokota.)

Q. Do you know what revolutions are turned by the engines when the vessel is proceeding at full ahead, with the revolutions regular?

A. 118 revolutions.

Q. And what revolutions are turned when the engines are going full ahead but the revolutions are reduced? When you are going full ahead on reduced revolutions, at what revolutions do the engines turn?

A. They turn at various revolutions.

Q. When the vessel is loaded as she was on September 4, 1940, at what speed, in your opinion, does the vessel proceed, when the engines are full ahead, at revolutions of 118?

A. 16 knots.

Q. And, under the same conditions, what, in your opinion, is the speed of the vessel when the engines are half ahead?

A. About eight knots or miles.

Q. And what is the speed of the vessel under the same conditions when the engines are at slow ahead? A. 6½ miles.

Q. Mr. Yokota, the "Sakito Maru" is a merchant vessel, is she not? A. Yes.

Q. Does she also carry some passengers?

A. Four passengers.

Q. How many hatches does the vessel have? [501]

A. Seven.

Q. How many hatches are forward of the bridge? A. Three.

(Deposition of T. Yokota.)

Q. And where are the other hatches located?

A. Back of the bridge.

Q. Is there any other superstructure separating the hatches back of the bridge?

A. Where the crew sleep; their chambers.

Q. Is the distance from the bridge to the bow of the "Sakito Maru" 65 meters?

A. About 65 meters.

Q. Would you estimate that the bridge, when the vessel is loaded as she was on that day, is about 52 or 53 feet above the waterline?

A. About that.

Q. The "Sakito Maru" has two screws, has she not? A. Yes.

Q. And in what direction do those screws turn?

A. Outward.

Q. In other words, the port screw is left turn and the starboard screw is right turn, is that correct? A. That is correct.

Q. The vessel is powered by two Mitsubishi Diesel engines, is she not? A. Yes.

Q. And is it not correct that these engines are 2-cycle [502] single acting? A. Yes.

Q. They have direct connection with the shaft, have they not? A. Yes.

Q. And each engine has seven cylinders?

A. Yes.

Q. Mr. Yokota, what time did you go on watch on September 4, 1940?

A. At 3:55 a. m.

(Deposition of T. Yokota.)

Q. What officer was on watch when you went up on the bridge?

A. A. Kanda, an apprentice officer.

Q. He wasn't the officer that you relieved, was he? A. The second officer.

Q. Apprentice Officer Kanda was on your watch, was he not? A. Yes.

Q. Who else was on the bridge during your watch?

A. The quartermaster, by the name of Aono, and another quartermaster by the name of Namba.

Q. Was anyone standing lookout after you took over the watch at 4 o'clock?

A. There was one man, a lookout, right at the bow.

Q. Was his name Tamayama?

A. Yes. [503]

Q. He was an A. B. sailor, was he not?

A. Yes.

Q. How long did he remain lookout at the bow?

A. From 4 to 5 a. m.

Q. What was the condition with respect to whether it was light or dark at 5 a. m.?

A. It was daylight at that time.

Q. Approximately what time did daylight break?

A. The sun rose, I think, about 5:20 a. m.

Q. On what course was the vessel being steered when you came on watch?

A. At 340 degrees.

(Deposition of T. Yokota.)

Q. When you say 340 degrees do you mean 340 degrees true? A. True; yes.

Q. Your gyro compass course is the true course, is it not? A. Yes.

Q. Did you order any change in the course when you came on watch?

A. No; I did not.

Q. Did you take any bearings while you were on watch?

A. Not when I went up to the bridge.

Q. When was the first bearing that you took?

A. At 5:20 a. m.

Q. And did you take some bearings subsequent to that [504] time?

A. I took about three.

Q. Is this the chart that you were using aboard the vessel at that time? A. Yes.

Mr. Adams: I would like to have this chart marked for identification at this time and I suggest that it be marked as Yokota Exhibit No. 1 inasmuch as I have a series of exhibits to introduce, and we will probably have innumerable witnesses before we get through.

Mr. Cluff: Why not identify the chart by its number?

Mr. Adams: For the record, this chart is the chart of the U. S. Geodetic Survey No. 5101.

Q. Will you point out, Mr. Yokota, on this chart where you took the first bearing?

A. Right there.

(Deposition of T. Yokota.)

Mr. Adams: Let the record show the witness is indicating a line intersecting the line drawn for the course of the vessel, opposite which intersecting line is the notation "5:20" and "77½".

Q. Is that correct, Mr. Yokota?

A. That is correct.

Q. That was a 1-point bearing, was it not, Mr. Yokota? A. Yes.

Q. And on what point was the bearing taken?

A. From the south point of Santa Catalina Island. [505]

Q. Will you indicate the next bearing that was taken?

A. Right there as indicated.

Mr. Adams: The witness is indicating three sets of two intersecting lines each, which are toward Los Angeles Harbor from the intersecting line made at 5:20.

Q. Those three bearings were 2-point bearings, were they not?

A. Yes; they were 2-point bearings.

Q. And on what points did you take those bearings?

A. One was from the south point of the Island and the other was from Long Point on the Island.

Q. Both of those points were on Santa Catalina Island, were they not? A. Yes.

Q. Prior to the bearing that was taken at 5:20, what was the last bearing that the officer on watch had been able to take, prior to 5:20? I will with-

(Deposition of T. Yokota.)

draw the question. Prior to the bearing that you took at 5:20, when was the last bearing taken?

A. I don't understand you.

Q. When you came up on the bridge at about 4 a. m., the second officer had been navigating by this chart, had he not? A. Yes.

Q. What did the chart show with reference to any bearings that had been taken by the second officer when he [506] was on watch?

A. Right there.

Mr. Adams: The witness is indicating a piece of paper that is appended to this chart which is Yokota's Exhibit No. 1, which has another intersecting line with a circle and a dot, opposite which is marked "1:50" and the figure "218".

Q. Is that correct, Mr. Yokota?

A. Yes; that is correct.

Q. And on what point was that bearing taken?

A. The lighthouse south of Coronado Island.

Q. From that time, that is, from 1:50 a. m., to 5:20 a. m., when you took the bearing, the navigation was by dead reckoning, was it not?

A. Yes.

Q. You have already indicated that after 5:20 you took three 2-point bearings. Now, did you take still another 2-point bearing after those three?

A. Yes; when we were abeam of the lighthouse of that point there of Santa Catalina Island. I took it at that time.

Mr. Adams: Let the record show that the wit-

(Deposition of T. Yokota.)

ness is pointing out another set of two intersecting lines, with a dot and a circle around the dot, opposite which is marked "5:58".

Q. Is that the time that bearing was taken? [507]

A. Yes.

Q. Was that a 2-point bearing? A. Yes.

Q. Did you use the same two points as you did on the prior three bearings? A. Yes.

Q. After taking those bearings, did you correct on the chart the position of the vessel?

A. Yes; I did change it.

Q. This line beginning with the 2-point bearing immediately preceding the 2-point bearing of 5:58 which is parallel with the course that the vessel had been following on 340 true is what you drew at that time, is it not? In other words, the shorter of the two parallel lines is the line that you drew after the position of the vessel on the chart had been corrected? A. Yes.

Q. There is a dot with a circle around it on that line, opposite which is the mark "6". Does that designate 6 a. m.? A. Yes; 6 a. m.

Q. Was that position fixed by means of bearings? A. No.

Q. How did you fix that position?

A. There are only two minutes' differences in there and I based it on the speed of the ship at that time.

Q. Did you take any reading of the log? [508]

A. Yes.

(Deposition of T. Yokota.)

Q. Proceeding on that line toward Los Angeles Harbor, there is another dot with a circle around it, opposite which is marked "6:08"?

A. Yes.

Q. Is that a 2-point bearing? A. Yes.

Q. And was that bearing taken at 6:08?

A. Yes; that is the one.

Q. And was that bearing again taken on Long Point on the southeast end of Santa Catalina Island? A. Yes.

Q. Again proceeding on that line toward Los Angeles Harbor, there is another line with a dot, opposite which is marked "6:28", is that correct?

A. Yes; that is right.

Q. What does that represent?

A. That is the bearing I took at 6:28.

Q. That was a 1-point bearing, was it not?

A. Yes.

Q. And on what point was that bearing taken?

A. The southern point of Santa Catalina Island.

Q. Why didn't you take a 2-point bearing, using Long Point as another point?

A. Because, if you take Long Point, the color would be the same as the mountains there and you couldn't see it. [509]

Q. You mean Long Point became diffused in the background of the Island and it didn't stand out, is that correct? A. That is correct.

Q. Proceeding along that same line on this ex-

(Deposition of T. Yokota.)

hibit, there is a dot with a circle around it, opposite which is marked "7:00". Does that indicate 7 a. m.?

A. That is 7 a. m.

Q. And how did you fix the position of the vessel at that time?

A. I figured it on the basis from 6 a. m., at the speed of 16 miles per hour.

Q. You didn't take any bearings at that time?

A. No; I did not.

Q. Just beyond that dot with the circle is another dot with a circle, opposite which is a symbol for an anchor. What does that represent?

A. That is the position where we expected to drop the anchor.

Q. Was that position fixed by you prior to the collision or after the collision? A. No.

Q. Which?

A. It was after the collision.

Q. Was it fixed by taking any bearings?

A. No. [510]

Q. At what time was that position fixed?

A. After the collision.

Q. About how long after the collision?

A. I don't remember.

Q. Is that supposed to indicate the position of the vessel at anchor after the collision?

A. Yes.

Q. How did you fix the position of the vessel at that time?

A. Of course, we were running at slow speed and

(Deposition of T. Yokota.)

that is about the speed that I thought it would be.

Q. In other words, Mr. Yokota, that position indicating where you anchored is not supported by any bearings that you took?

A. That is correct.

Q. And it is simply an estimate? A. Yes.

Mr. Adams: I will offer this chart in evidence at this time but I would like to ask leave of counsel to substitute a photostatic copy of the chart so that I may have the original chart at the time the master of the vessel is interrogated. Is there any objection to that practice?

Mr. Black: You may retain it in your possession as far as I am concerned.

Mr. Adams: I would prefer that, if there is no objection on the part of counsel. [511]

Mr. Eastham: You may retain it as far as I am concerned.

Mr. Clough: So stipulated on our part.

Mr. Stearns: So stipulated.

Mr. Montgomery: So stipulated.

Mr. Adams: I take it, if there is no objection, that it is so stipulated by all counsel.

Mr. Montgomery: Will it also be stipulated we may have a photostatic copy if we so desire?

Mr. Adams: Yes; surely.

Q. Mr. Yokota, after you came on watch at 4 o'clock or about 4 o'clock, did the master of the vessel come up on the bridge?

A. Yes; he did.

(Deposition of T. Yokota.)

Q. At what time? A. At 5:58 a. m.

Q. Did you send for him?

A. Yes; I did.

Q. Why did you do that?

A. The second officer told me that the captain wanted to be advised as soon as we came abeam of the lighthouse of Santa Catalina Island, the southern point.

Q. How did you advise him?

A. At the time when we were that distance.

Q. I say how did you inform him? Did you send for him by someone?

A. I sent the apprentice officer, Kanda, to him.

[512]

Q. How long did the captain remain on the bridge when he came to the bridge? A. Two minutes.

Q. Did he give any orders to you on that occasion?

A. He told me to let him know when we got five or six miles off of the lighthouse in Los Angeles Harbor.

Q. Did he give you any instructions with respect to the course of the ship or the speed of the vessel? A. Nothing.

Q. How were your telegraphs set at that time?

A. Full speed ahead.

Q. You had been proceeding at full speed ahead, had you not, all the time you were on watch?

A. Yes.

Q. What was the condition of the weather at that time? A. Very good weather.

(Deposition of T. Yokota.)

Mr. Cluff: Are you referring to 5:58?

Mr. Adams: I am referring to 5:58.

Q. What was the condition of the sea at that time? A. It was smooth.

Q. Had the weather and the sea been in the same condition since you had been on watch?

A. It was the same.

Q. Did the captain return to the bridge after that first time? A. Yes; he did. [513]

Q. Did you send for him? A. Yes; I did.

Q. Did you send the apprentice officer, Kanda, for him? A. Yes.

Q. And what time did he come up on the bridge this second time? A. At 7 o'clock.

Q. And why did you send for the captain at that time?

A. Because we were about five miles from the Los Angeles lighthouse.

Q. What was the condition of the weather between 6 o'clock and 7 o'clock a. m. that morning?

A. It was good at about 6 o'clock and about 7 o'clock the front part of the ship got misty.

Q. When you say the front part of the ship, do you mean that ahead it got misty?

A. Just the front part of the ship.

Q. Was there good visibility on the port and starboard sides of the ship at 7 o'clock a. m.?

A. Yes; you could see very well port and starboard.

Q. Is that also true of aft of the ship?

(Deposition of T. Yokota.)

Q. At what time? A. At 5:58 a. m.

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A. Yes; I did.

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(Deposition of T. Yokota.)

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Q. When you say the front part of the ship, do you mean that ahead it got misty?

A. Just the front part of the ship.

Q. Was there good visibility on the port and starboard sides of the ship at 7 o'clock a. m.?

A. Yes; you could see very well port and starboard.

Q. Is that also true of aft of the ship?

(Deposition of T. Yokota.)

A. Yes; good.

Q. About how far do you believe you could see ahead of the ship at that time?

A. About three miles, I think.

Q. Did the captain give any orders when he came up on [514] the bridge at 7 a. m.?

A. Not at 7 o'clock.

Q. At what time did he give the first order?

A. At 7:03.

Q. What order did he give at that time?

A. Stand by engine and then slow.

Q. Who executed that order? A. I did.

Q. Did you execute the order on the engine-room telegraphs? A. Yes.

Q. Did you get a response from the engine-room immediately? A. Right away.

Q. Did you give those two orders on the telegraph one right after the other?

A. Yes; right away.

Q. Was there any other order given by the captain at that time?

A. That is all at that time.

Q. When was the next order that he gave?

A. When we saw the barge.

Q. I don't mean by asking you what orders he gave only what orders he gave with respect to the speed of the vessel. I mean did he give any other orders to you or to the helmsman or anyone else at that time? [515]

A. He gave the order to blow the whistle.

(Deposition of T. Yokota.)

Q. And what time did he give that order?

A. At 7:03.

Q. Who executed that order?

A. The first two times I blew the whistle.

Q. What was the duration of the blasts that you blew? A. About a minute apiece.

Q. Do you mean that you blew the whistle a minute long or did you blow blasts at intervals of one minute? I will withdraw the question. How long was the first whistle that you blew?

A. About five seconds.

Q. When did you blow the next whistle?

A. About a minute after.

Q. And how long was that whistle?

A. About five seconds.

Q. Who blew the whistle after those first two whistles that you blew?

A. Kanda, the apprentice officer.

Q. Did he continue to sound the fog signal thereafter, that is, Kanda?

A. Yes; right along.

Q. And at what intervals did he sound the whistle?

A. About the same way that I executed the blowing of the whistle.

Q. Is that also true of the length of the blasts?

[516]

A. Yes; about the same.

Q. Did you time the intervals between whistles with a watch or clock? A. No.

(Deposition of T. Yokota.)

Q. Did you time the duration of the blasts?

A. No.

Q. On what are your estimates based?

A. My experience.

Q. Did Kanda continue to blow the whistle in that manner up until the time of the collision?

A. Yes; right along.

Q. You have already described the type of whistles with which the vessel is equipped, have you not, Mr. Yokota? A. Yes.

Q. What type of whistle were you using for the fog signal? A. An air whistle.

Q. Have you subsequent to the collision made a test as to at what distance that air whistle may be heard?

A. After we got to Kobe, I tried that or examined it and tested it.

Q. What test did you make at Kobe, Mr. Yokota?

A. I sent a launch out from the ship and tested it in that manner.

Q. Were you on the launch?

A. No; I wasn't on the launch. [517]

Q. Did you send some of the crew out in the launch?

A. The third officer and the marine superintendent at Kobe.

Q. After the test was made, did they come back and report to you? A. Yes.

Q. What did they report?

Mr. Eastham: That is objected to as hearsay.

(Deposition of T. Yokota.)

Mr. Cluff: And we object to that as hearsay.

Mr. Adams: For the purpose of the record, I wish to state this was a test made under the supervision of the first officer, in the regular course of his duties, and the report was made to him by a member of the crew in the regular course of his duties.

Mr. Eastham: I also make the further objection that there is no foundation laid.

Mr. Cluff: And I add the objection that it was not in the regular course of his duties and was post item motam for the purposes of this litigation.

Mr. Purpus: I join in the objections.

Q. By Mr. Adams: Mr. Yokota, let me ask you this. While the men were in the launch as you have described, was the air whistle of the "Sakito Maru" sounded?

Mr. Eastham: I object to that as immaterial.

Mr. Adams: Those objections are reserved.

A. I started the whistle and, as I did so, the launch [518] advanced.

Q. And, when the launch returned, did the men make a report to you at what distance they had heard the whistle? A. They did.

Q. And what did they report?

Mr. Cluff: To which we object on the grounds that it is hearsay and no foundation laid. And, while objections as to substance are reserved by our stipulation, I object to the question being answered as an obvious attempt to introduce palpably hearsay and incompetent evidence.

(Deposition of T. Yokota.)

Mr. Eastham: I join in the objection.

Mr. Montgomery: We join in the objection.

Mr. Adams: I object to the implication that it is an obvious attempt to introduce hearsay and incompetent evidence.

Mr. Cluff: I insist on all of the implications of that statement.

Mr. Clough: I join in the objection.

Mr. Purpus: I will join in the objection that it is hearsay.

Mr. Goldwater: And I join in the objection.

Mr. Black: And we make the same objections. I suppose it may be understood, unless somebody speaks up to the contrary, that we all join in the objections.

Mr. Adams: Will you read the question, Mr. Reporter?

(Question read by reporter.) [519]

A. That they could hear it positively at three and one-half miles distant.

Q. Mr. Yokota, have you, yourself, on any occasion ever been off and away from the vessel and heard the air whistle?

Mr. Eastham: I object to that as irrelevant and immaterial.

Mr. Montgomery: Also that there is no proper foundation laid in that the conditions under which the witness heard the whistle are not shown, that is, as to whether they were similar or the same as

(Deposition of T. Yokota.)

the conditions that existed in San Pedro Harbor on the day of the collision.

Mr. Adams: He has already answered that he has not. So it is all a moot dispute.

Mr. Montgomery: Anyhow, I want the record to show that the objection is made.

Q. By Mr. Adams: Mr. Yokota, during your experience aboard ships since 1926 have you had occasion to hear the whistles of many vessels?

A. I have.

Q. Have you had occasion to estimate the distance at which these whistles of various vessels have been heard by you? A. I have.

Q. Have you had occasion to compare the volume of the sound made by the air whistle of the "Sakito Maru" with [520] whistles of other vessels that you have heard? A. No; I have not.

Q. Based upon your experience, at what distance, in your opinion, could the whistle of the "Sakito Maru" be heard?

Mr. Montgomery: We object to that as no proper foundation laid.

Mr. Black: We also object for the same reason.

Mr. Goldwater: I thought it was stipulated all objections would be joined in unless objections were stated by somebody not joining.

Mr. Cluff: I think that will save time, that is, that silence means concurrence.

Mr. Montgomery: May I restate my objection to the question? There is no proper foundation laid

(Deposition of T. Yokota.)

in that there is no showing that the witness's estimates to which he has testified were correct.

Mr. Adams: Will you read the question to the witness, please?

(Question read by reporter.)

A. When there is no wind, you can hear it definitely at two miles.

Q. Mr. Yokota, what was the condition of the wind at about 7 o'clock a. m. that morning?

A. It was northeast and it was at the scale of 1, Beaufort's Scale.

Q. Was a notation made concerning the wind while you [521] were on watch?

A. Yes; there was.

Mr. Adams: I might state that I have here what is equivalent to the rough log, that is called aboard this vessel a memorandum log, and I have the smooth deck log, and I have photostatic copies of this memorandum sheet and a photostatic copy of the deck log for September 4, 1940. Perhaps my introduction of these records might be objected to as self-serving declarations but I think sooner or later all counsel will want these records to be introduced into the record here. And, if there is no objection, I am quite willing to offer them all at this time and have the witness identify them. Does anyone see any objection to that procedure?

Mr. Eastham: Where is the original log?

Mr. Adams: Right here. If no one voices any objection, may I assume there is none?

(Deposition of T. Yokota.)

Mr. Cluff: Let me ask you is that the smooth log which you have beside you?

Mr. Adams: That is the smooth log.

Mr. Cluff: You have a little memorandum sheet there beside you, about 3 by 5. Do I understand that that is all of the rough log or scrap log for the day of September 4th?

Mr. Adams: No; for this particular watch. That is my understanding.

Mr. Cluff: That is, it carries from 4 a. m. up to the [522] time of the collision?

Mr. Adams: That is my understanding.

Mr. Cluff: I have no objection to the witness identifying them. I think it is a good idea to get them in and get them marked.

Q. By Mr. Adams: Mr. Yokota, I show you what purports to be a memorandum and I will ask you what that is.

A. This is a bridge memo.

Q. Who keeps that bridge memo?

A. On my watch the apprentice officer keeps it.

Q. Does he keep it under your supervision?

A. Yes.

Q. Does this particular sheet which is before you represent the memorandum kept by Apprentice Officer Kanda during the watch from 4 a. m. to 8 a. m. on September 4, 1940? A. It is.

Q. There are Japanese characters at the head of seven columns there? A. Yes.

Q. Will you translate the titles of those columns, beginning from left to right?

(Deposition of T. Yokota.)

A. The first column is the time, then the reading of the patent log, the speed, the course, the deviation, the wind, the direction and force and the last column is the weather.

Q. There is one other Japanese character there or in [523] the first column and in the second line there are more Japanese characters. What are those?

A. The top is a. m. and the bottom is p. m.

Q. Referring again to this memorandum sheet, Mr. Yokota, were the entries in pencil made on that sheet all made by Apprentice Officer Kanda?

A. Yes.

Q. Were they made as of the time that the events happened which are recorded on there?

A. Yes; each time.

Q. While I believe all the entries are clear which are within the printed box at the top, I wish you would read the notations beginning with the first below that box, "5:58", and just read them off clear down to the bottom in the order in which they are shown.

A. "5-58 Santa Catalina Id. SE p't ab'm (250) 10½ miles off."

Q. Just a minute, Mr. Yokota. Was that entry made at the time the vessel was abeam the southeast point of Santa Catalina Island at 5:58 a. m.?

A. Yes.

Q. Was it made under your supervision?

A. Yes.

Q. What is the next entry?

(Deposition of T. Yokota.)

A. "Took in patent log showing 288."

Q. Is that the reading of the patent log, that 288? [524] A. Yes.

Q. Was that done at 5:58 also? A. Yes.

Q. What is the next entry?

A. "7-03 stand by engines and slow down engines. Attended fog signal."

Q. What is the next entry?

A. There is a "09" there and the figure "7" is lacking. "Stop & full astern."

Q. That has reference to the engines, does it, Mr. Yokota?

A. Yes. Next, the number 7 is lacking and the figure 11 appears and "stop".

Q. That means 7:11 and stop engine, does it?

A. Yes.

Q. And the next entry is what?

A. "13" with the figure 7 lacking. "Full astern both engines. 14", with the figure 7 lacking; "stop", that meaning starboard engine.

Q. What is the next entry?

A. "15", with the 7 lacking, "stop P.", meaning port engine. "17", with the 7 lacking; "let go S. anchor", meaning starboard anchor. "18", meaning 7:18; "slow ahead. 19", meaning 7:19, "stop", meaning the engines to be stopped. "Brought up anchors".

Mr. Adams: If there is no objection voiced by counsel, [525] I offer in evidence a photostatic copy of this memorandum sheet.

(Deposition of T. Yokota.)

Mr. Cluff: It is objected to as self-serving.

Mr. Black: We object to it as a self-serving document. I suggest it be marked for identification.

Mr. Adams: All right. I will offer it for identification. There is no objection to the use of the photostatic copy, I take it.

Mr. Cluff: Will you retain the original in your possession?

Mr. Adams: Yes. May I have the notary write his name and some designation on that original?

(The notary marked the original as Yokota Exhibit No. 2 and signed his name thereto.)

823

UNITED STATES
Navy
FOR THE NINTH COURT OF APPEALS
10190
JUL 1 1942

JUL 1 1942
PAUL P. O'BRIEN

時間	測量儀	示數	電力	針	路	自 差	風	力	機
午後	256	15.8 (340)			W.W. 2	6			
5	272.2	16.2	>		,	1			
6	288.0	15.8	,						
7	16.0	,							
8	1.5	,							

記 # VAPR 15:30Z

500' inland California got 50 ft
also. (750) > 10 1/2' off
both m.p. log showing 288'

700' 500' logs & 50m. Standard log
big. 69' log & well ast "stab
12' log & 16' log &
15' log 1.

12' log 15' 50'
15' log 16' 50'

SEP 1 1941
PAUL P. O'BRIEN

(Deposition of T. Yokota.)

Q. I show you what purports to be a photostatic copy of the sheets of the deck log for September 4, 1940, and I ask you if that is correct.

A. That is correct.

Mr. Adams: I will offer the photostatic copy for identification.

Mr. Cluff: May I ask a couple of questions before it is offered?

Mr. Adams: Yes.

Q. By Mr. Cluff: By whom was this smooth log of September 4th written up?

A. Under my watch, the Apprentice Officer Kanda writes it under my supervision. [526]

Q. And on the occasion of this particular log, when was it written up, what time?

A. On the afternoon of the day of the accident or the collision.

Mr. Cluff: There is no objection to its being marked for identification.

Q. By Mr. Adams: Mr. Yokota, what is the practice aboard the ship with respect to writing up the smooth log, at what time?

A. After a person's watch.

Q. Why was that not done on this occasion?

A. There was no time to write it.

Q. Why was there no time?

A. There was a lot of work there. We had to lower the lifeboats and lower the anchor and a lot of work to attend to.

Mr. Adams: Will you mark this as Yokota's Exhibit No. 3 for identification?

No.	Date	Time	W.	Variation	Compass		Course
					True	Magnetic	
1	15° 8' <260>	W.W.W. 2	6				P. 117.6
2	15° 8'	.	1	.			D. Discharge
3	15° 6'	.	1	.			C. 95.5%
4	15° 8'	.	1	.	760.2	185° 18'	A. 117.8
5	16° 2'	.	1	.			P. 116.3
6	15° 5'	.	1	.			T. D. S. P.
7	16° 0'	.	2	.			C. M. N.
8	15° 5'	North	1	.	760.5	18 18'	A. 116.6
9							P.
10							C.
11							B.
12							A. Boiler W. Eng.
13							B. Fuel Oil
14							C. Water
15							D. Diesel Oil
16							E. Lubricating Oil
17							F. Gasoline
18							G. Kerosene
19							H. Gasoline
20							I. Diesel Oil
21							J. Gasoline
22							K. Kerosene
23							L. Gasoline
24							M. Diesel Oil
25							N. Gasoline
26							O. Kerosene
27							P. Diesel Oil
28							Q. Gasoline
29							R. Kerosene
30							S. Diesel Oil
31							T. Gasoline
32							U. Kerosene
33							V. Diesel Oil
34							W. Gasoline
35							X. Kerosene
36							Y. Diesel Oil
37							Z. Gasoline
38							A. Diesel Oil
39							B. Gasoline
40							C. Kerosene
41							D. Diesel Oil
42							E. Gasoline
43							F. Kerosene
44							G. Diesel Oil
45							H. Gasoline
46							I. Kerosene
47							J. Diesel Oil
48							K. Gasoline
49							L. Kerosene
50							M. Diesel Oil
51							N. Gasoline
52							O. Kerosene
53							P. Diesel Oil
54							Q. Gasoline
55							R. Kerosene
56							S. Diesel Oil
57							T. Gasoline
58							U. Kerosene
59							V. Diesel Oil
60							W. Gasoline
61							X. Kerosene
62							Y. Diesel Oil
63							Z. Gasoline
64							A. Diesel Oil
65							B. Gasoline
66							C. Kerosene
67							D. Diesel Oil
68							E. Gasoline
69							F. Kerosene
70							G. Diesel Oil
71							H. Gasoline
72							I. Kerosene
73							J. Diesel Oil
74							K. Gasoline
75							L. Kerosene
76							M. Diesel Oil
77							N. Gasoline
78							O. Kerosene
79							P. Diesel Oil
80							Q. Gasoline
81							R. Kerosene
82							S. Diesel Oil
83							T. Gasoline
84							U. Kerosene
85							V. Diesel Oil
86							W. Gasoline
87							X. Kerosene
88							Y. Diesel Oil
89							Z. Gasoline
90							A. Diesel Oil
91							B. Gasoline
92							C. Kerosene
93							D. Diesel Oil
94							E. Gasoline
95							F. Kerosene
96							G. Diesel Oil
97							H. Gasoline
98							I. Kerosene
99							J. Diesel Oil
100							K. Gasoline
101							L. Kerosene
102							M. Diesel Oil
103							N. Gasoline
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115							Z. Gasoline
116							A. Diesel Oil
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126							K. Gasoline
127							L. Kerosene
128							M. Diesel Oil
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263							R. Kerosene
264							S. Diesel Oil
265							T.

(Deposition of T. Yokota.)

Q. Mr. Yokota, it has been asked off of the record if it is the custom to keep your log in English? Is that so?

A. Our company has them all written up in English.

A. In other words, that is the custom aboard all vessels of the N. Y. K. Line, is it?

A. Yes; all vessels of our company.

Q. Mr. Yokota, returning your attention to the time of 7:03 a. m. of September 4, 1940, was anyone standing lookout [527] at the forecastle head prior to 7:03 a. m.?

A. No; there was no lookout.

Q. There had been none since daylight at 5 o'clock a. m., is that correct?

A. No; there was not.

Q. Did anyone stand lookout on the forecastle head after 7:03 a. m.? A. Yes; there was.

Q. Who was that? A. Shimada, a sailor.

Q. Is he an A. B. sailor?

A. Yes; he is an A. B. sailor.

Q. When did he go out there?

A. Right after 7:03.

Q. Are there any standing instructions on the "Sakito Maru" with respect to the sailors standing lookout when the fog signal is sounded?

A. Yes; there is.

Q. What are the instructions?

A. When they hear the fog signal, they are always to go there as lookout.

(Deposition of T. Yokota.)

Q. Did you see Mr. Shimada standing lookout out on the forecastle head after 7:03 a. m.?

A. I did.

Q. Where did he stand?

A. At the elevated place right in front of the fore- [528] castle head.

Mr. Adams: I would like to have these four photographs marked for identification in the order in which I hand them to you, Mr. Notary, and then I will refer to them.

(Yokota's Exhibits Nos. 4, 5, 6 and 7.)

Q. I show you a photograph, Mr. Yokota, which is marked for identification as Yokota Exhibit No. 4. What does that photograph show?

A. This is a photo of the "Sakito Maru".

Q. Showing the fore part of the vessel?

A. Yes.

Q. Where is the photograph taken from?

A. From the navigation bridge, I think.

Q. Was the vessel, on September 4, 1940, in the same general condition as shown in the photograph?

A. Yes; the same.

Mr. Adams: I offer that photograph in evidence.

Mr. Cluff: May we see it, please?

Mr. Stearns: Did he state when that was taken?

Mr. Adams: No. I didn't ask him.

Q. Do you know when that photograph was taken, Mr. Yokota?

A. No; I don't know that.

(Deposition of T. Yokota.)

Mr. Adams: I might state, Mr. Stearns, I know when it was taken if that would be of any assistance.

Mr. Cluff: Why don't you state it for the record? [529]

Mr. Adams: All right; I will state for the record that photograph was taken while the vessel was tied up at the Bethlehem yards either on September 4, 5, 6 or 7. She sailed, as I recall, on the 7th.

Mr. Cluff: Is that true of the whole set?

Mr. Adams: Yes; I think it is true of all of these photographs. You can recognize portions of Los Angeles Harbor in the photographs. Is there any objection to the photograph or my offer of it in evidence?

Mr. Cluff: There is no objection to the statement as to when or where it was taken.

Q. By Mr. Adams: I show you another photograph, Mr. Yokota, which is marked for identification Yokota's Exhibit No. 5. What does that show?

A. It is the forecastle of the "Sakito Maru".

Q. And that photograph was taken farther forward than the one just introduced, was it?

A. Yes.

Q. Does that show the general condition of the vessel as of September 4, 1940? A. Yes.

Mr. Adams: I offer that photograph in evidence. I might continue asking questions and, if anyone has any objections, they can voice them.

Q. I show you another photograph, Yokota's Exhibit No. 6 for identification, and ask you what that photograph shows. [530]

(Deposition of T. Yokota.)

A. This is the extreme fore part of the "Sakito Maru".

Q. Does that photograph show the structure of that portion of the vessel as of September 4, 1940?

A. There is no change.

Q. Mr. Yokota, is there a platform shown in that photograph? A. Yes; right there.

Q. Is that the platform upon which the lookout stood as you mentioned? A. Yes; right there.

Q. There is also a megaphone shown in that photograph. Is that a megaphone that the lookouts use?

A. It is.

Q. There is also shown in that photograph the bulwark of the vessel right at the extreme bow. How high is that bulwark above the deck?

A. 3½ to 4 feet.

Mr. Adams: I will offer that photograph in evidence.

Q. I show you still another photograph, marked Yokota's Exhibit No. 7 for identification. Does that also show the fore part of the vessel, including the platform you have just described?

A. Yes; right there; the same.

Q. Does that correctly show the structure of the vessel at that portion of the vessel as of September 4, 1940?

A. Yes; it is the same excepting that, when the lookout [531] was standing there, the megaphone was beside him.

Q. As shown in Yokota's Exhibit No. 6?

A. Yes; the same as that.

(Deposition of T. Yokota.)

Mr. Adams: I offer this photograph in evidence. I take it, if, after counsel have examined all of those photographs, no one voices an objection, that there is no objection.

Mr. Cluff: I understand they are offered simply for the purpose of showing the structure of the ship at the time of the collision.

Mr. Adams: Yes; and the other items that I have pointed out through the witness.

Mr. Cluff: Yes.

Q. By Mr. Adams: After you sounded the two fog signals yourself and Apprentice Officer Kanda took up sounding the whistles, what did you do?

A. I went outside of the wheel house and looked out forward.

Q. Did you continue to stand in that one position? A. I went to the left and right.

Q. Who all was on the ridge at that time?

A. Myself, the captain and Apprentice Officer Kanda and the quartermaster.

Q. Did you move about on the bridge?

A. Yes; I did.

Q. What were you doing as you were moving about and [532] standing in various positions?

A. I was looking forward.

Q. What was the captain doing at that time?

A. He was looking out forward, too, outside of the wheel house.

Q. And what was Apprentice Officer Kanda doing at that time?

A. He was blowing the whistle.

(Deposition of T. Yokota.)

Q. Was he doing anything else?

A. And he was also acting as lookout.

Q. The quartermaster, who was acting as helmsman, was at the wheel during that time, was he?

A. Yes; he was.

Q. Was he still steering a course of 340 degrees true? A. Yes.

Q. There had been no change in that course, had there? A. No.

Q. At what speed was the vessel proceeding, that is, how were the telegraphs set after 7:03?

A. Slow.

Q. I believe you testified that when the vessel was loaded as she was that day she made a speed of 6½ knots at slow ahead, is that correct?

A. Between 6 and 6½ miles.

Q. How long do you estimate it took for the vessel to decelerate to that speed after the engines were changed from [533] full ahead to stand by and slow ahead? A. About three minutes, I think.

Q. So, at 7:06 a. m., you believe the vessel was proceeding at a speed of about 6 or 6½ knots?

A. Yes; I think so.

Q. Did you see anyone on the forecastle head before Mr. Shimada went out there and started standing lookout?

A. I saw an apprentice sailor by the name of Yokoyama standing there.

Q. What did you see him do after 7:03, when the first fog signal was sounded?

(Deposition of T. Yokota.)

A. He was working there about until 7:03 and as soon as he heard the whistle he looked forward.

Q. Did he stand on the platform and act as lookout? A. Yes; he did.

Q. Did you see him there? A. I did.

Q. Did you see him leave there when Shimada arrived on the scene? A. Yes; I did.

Q. And you then saw Shimada stand on the platform and act as lookout, is that correct?

A. Yes; I did.

Q. What was the first notice that you received of the barge "Olympic II" being in the near whereabouts? I will withdraw that question. What was the first notice you [534] received of the presence of the "Olympic II"?

A. When Shimada, the lookout, megaphoned saying there was a ship ahead.

Q. Where were you standing at that time?

A. Outside of the wheel house.

Q. On what side?

A. I am not positive but I think it was the starboard side.

Q. After he sounded the warning, could you see the barge?

A. Yes; right away after he made the report.

Q. Where was it?

A. Right in front; approximately right in front.

Q. Did you see the barge clearly?

A. Not very clearly because I saw it through the fog.

(Deposition of T. Yokota.)

Q. Did it appear to lie at right angles to the course of the "Sakito Maru"?

A. About right angles.

Q. What did you do immediately after hearing that warning from the lookout and seeing the barge?

A. I ran to the wheel house and I telegraphed to the engines to stop.

Q. Did the master give you any order at that time?

A. Simultaneously he gave me the order.

Q. What order did he give you?

A. Stop engines. [535]

Q. Did he give you any other order?

A. And immediately he gave the order full astern.

Q. What did you do?

A. I telegraphed the engines the same order.

Q. In what manner did you operate the telegraphs?

A. I pulled it to stop and then pulled it astern two or three times.

Q. In other words, you jingled the telegraphs, did you not? A. Yes.

Q. And what was the purpose of jingling the telegraphs?

A. Because the more we jingle that thing, the engineers will increase the revolutions quicker.

Q. In other words, Mr. Yokota, when you jingle the telegraph in that manner, that indicates an emergency situation, does it not?

A. Yes. The engineer knows that.

(Deposition of T. Yokota.)

Q. Did you get an immediate response from the engine-room when you gave those signals on the telegraphs? A. Right away.

Q. Did you notice any change with respect to the engines from vibration or any other indication?

A. Yes; I did feel the vibration.

Q. What did that indicate to you?

A. It appeared to me that the engines were increasing in revolutions. [536]

Q. Did it indicate anything with respect to in what direction the engines were turning?

A. That they were going astern.

Q. At what time was this signal given by you on the telegraphs? You may refresh your memory, if you need to, from the log book.

A. At 7:09 I gave the signal full astern.

Q. And when was the signal stop?

A. At 7:11.

Q. As I understand you, you gave a signal on the telegraph of stop followed by a signal of full astern. Now, what time was the first signal of stop given?

A. At 7:09.

Q. It is the practice aboard your vessel, is it not, as most vessels, that events are logged according to the nearest half minute? A. Yes.

Q. Were there any other orders given by the captain at 7:09.

A. He gave orders to the quartermaster.

Q. What orders did he give?

A. Hard astarboard.

(Deposition of T. Yokota.)

Q. Did you see the quartermaster execute that order? A. I did.

Q. What did he do?

A. He, with all of his might, turned the wheel hard [537] astarboard.

Q. Prior to the time that the lookout called from the forecastle head, did you hear any signal from any other vessel besides the "Sakito Maru"?

A. I didn't hear any.

Q. Did anyone aboard the "Sakito Maru" make any report prior to that time of having heard any signal? A. Nobody did.

Q. After you sighted the barge, did you hear any signal from any other vessel?

A. After I saw the barge, just a little while after that, I heard the bell.

Q. Will you describe the sound that you heard made by the bell?

A. It was a continuous ringing.

Q. Did you see any people on the barge before the impact? A. Yes; I did.

Q. What were they doing?

A. They were fishing.

Q. Did you see any other vessels or craft in the vicinity besides the barge?

A. I saw a small motorboat on the other side of the barge.

Q. When you say the other side do you mean on the side opposite the side on which the "Sakito Maru" was [538] approaching?

A. Yes; that is right.

(Deposition of T. Yokota.)

Q. At what time did the "Sakito Maru" collide with the barge? A. At 7:10½.

Q. Did you notice any change in the course or heading of the "Sakito Maru" prior to the impact?

A. I think it changed just a little bit before the impact.

Q. In what direction?

A. To the starboard a little.

Q. At what angle do you believe the "Sakito Maru" struck the barge?

A. About right angles.

Q. What was the next order of the captain after the orders that you have already described?

A. After they hit, he gave orders to stop the engines.

Q. At what time was that?

A. At 7:11, I think.

Q. Who executed that order on the ship's telegraph? A. I did.

Q. You say you think that was at 7:11. Can you, by referring to the log book, refresh your memory and tell us definitely at what time it was?

A. I wasn't looking at my watch but it was about 7:11.

Q. Did you get an immediate response from the engine- [539] room at that time?

A. Right away.

Q. What happened with respect to the position of the "Sakito Maru" against the side of the barge or in any hole that the "Sakito Maru" made in the side of the barge?

(Deposition of T. Yokota.)

A. After we hit, it loosened up a little backwards.

Q. Did the bow of the "Sakito Maru" separate from the barge? A. A little bit.

Q. What was the next order given by the captain? A. Full astern, both engines.

Q. From your observations at the time, do you believe that the propellers of the "Sakito Maru" were working in a reverse direction at the time of the impact?

A. Yes; at the time we hit, they were moving in the opposite direction.

Q. About how fast do you think the "Sakito Maru" was proceeding at the time of the impact?

A. A mile and a half or two miles.

Q. What time was the order given by the captain, after the engines were stopped at 7:11, to put the engines full astern? A. At 7:13.

Q. That was two minutes after the stop order, is that correct? A. Yes. [540]

Q. Had the bow of the "Sakito Maru" separated from the barge more at 7:13 than it was at 7:11?

A. At 7:13 it was completely separated.

Q. At 7:13, before the engines were put full astern, the bow was completely separated from the barge, is that correct? A. Yes; it was.

Q. Did you remain on the bridge?

A. No; I did not remain there.

Q. When did you leave?

A. After I gave the signal at 7:11 of stop, I left the bridge.

(Deposition of T. Yokota.)

Q. What did you do then?

A. I went to the forecastle.

Q. Do you mean the forecastle head?

A. Yes; right to the bow.

Q. And what did you do when you got to the forecastle head?

A. I made the arrangements to lower the anchor.

Q. How many men are necessary for that operation? A. Besides me, two more.

Q. Were there two other men there besides you?

A. There were.

Q. Did you immediately make preparations to lower the anchor? A. Yes; right away.

Q. What did you do after those preparations were [541] completed?

A. At the order of the captain, I lowered the anchor.

Q. Did you notify the captain when your preparations were completed?

A. Yes; as soon as I finished those preparations, I let him know.

Q. And was it at that time that the captain ordered you to lower the anchor? A. Yes.

Q. Did you drop the anchor at that time?

A. Yes.

Q. Which anchor did you drop?

A. The starboard anchor.

Q. What did you do after that was done?

A. I went to the lifeboats.

Q. To the lifeboats or boat? A. Just one.

(Deposition of T. Yokota.)

Q. Where was that boat located?

A. On the port side.

Q. On what part of the ship?

A. The middle.

Q. What did you find when you got there?

A. The lifeboat had already been lowered.

Q. Was it in the water? A. Yes.

Q. Was anybody in the lifeboat? [542]

A. The second officer and sailors.

Q. One sailor? A. No; a lot of them.

Q. How many? A. Seven or eight.

Q. What did they do after that?

A. In charge of the second officer, they immediately went to the barge.

Q. Did you see them row in the direction of the barge? A. I did.

Q. What time was the lifeboat lowered into the water? A. At 7:20.

Q. And what time was the anchor dropped?

A. At 7:17.

Q. Can the lifeboat be lowered into the water while the ship is in motion?

A. Very slowly, it can be lowered.

Q. From your observations, was the lifeboat lowered in the water as soon as it could be under the conditions then existing?

A. As fast as they could.

Q. After the lifeboat was lowered into the water at 7:20, did you continue from time to time to observe the lifeboat?

A. Yes; I was looking at it off and on.

(Deposition of T. Yokota.)

Q. What was it and the men in it doing? [543]

A. They were going around the barge.

Q. When you say they were going around the barge do you mean that the barge was still afloat at that time?

A. They were going around the spot where the barge had sunk.

Q. And how long did they continue to do that?

A. About two hours.

Q. While you were still on the forecastle head and prior to leaving to go to the lifeboat, did you see the barge? A. Yes; I did.

Q. What did you observe? What did you see on the barge?

A. I saw two or three people on the barge.

Q. Did you see any other small boats in the vicinity?

A. Yes; I saw a small boat on the other side.

Q. Did you see the barge sink? A. I did.

Q. How long was that after you had arrived on the forecastle head?

A. About two minutes, I think.

Q. Did the lifeboat find any survivors?

A. They didn't find anybody.

Q. Did they find any bodies?

A. No; they did not.

Q. By the time the lifeboat returned to the "Sakito Maru", had the Coast Guard cutter arrived? A. Yes; it had. [544]

Q. What did the Coast Guard cutter do after it arrived?

(Deposition of T. Yokota.)

A. The Coast Guard officer went to the captain.

Q. Did the Coast Guard cutter participate in the search for survivors or bodies?

A. Together with our lifeboat, they were searching.

Q. What time did your lifeboat return to the "Sakito Maru"? A. At 9:15.

Q. Did the "Sakito Maru" continue to remain anchored in the same spot?

A. Yes; right along.

Q. Until what time?

A. 1:05 p.m. I made a mistake. It was noon.

Q. What time did the pilot arrive?

A. 11:50 a.m.

Q. Did you heave up anchor at noon?

A. Yes.

Q. Where did the vessel go then?

A. It went into the breakwater, inside of the breakwater.

Q. And did the vessel anchor inside of the breakwater? A. Yes.

Q. What time? A. That was 1:05.

Q. Then did the vessel heave anchor again and proceed into berth? A. Yes. [545]

Q. What time?

A. We hove anchor at 2 o'clock.

Q. And did the vessel go to the Bethlehem Shipyards at Los Angeles Harbor? A. Yes.

Q. And what time did she come alongside a berth at the Bethlehem Shipyards? A. At 3:30.

(Deposition of T. Yokota.)

Mr. Adams: I would like to have these photographs marked for identification in the order in which they are presented.

(Yokota's Exhibits Nos. 8, 9, 10, 11, 12, 13 and 14.)

I wish to state for the purpose of the record that I have here several photographs which have been exhibited to counsel and, with their permission, I shall proceed to explain the circumstances under which they were taken and what they purport to show; and then, if there are any objections to the foundation that I lay by my statement, I can lay a further foundation with the witness.

Yokota's Exhibit No. 8 for identification is a photograph taken of the bow of the "Sakito Maru" while she was tied at the Bethlehem Shipyards, within a period of four days following the collision occurring upon Wednesday, September 4th and the vessel sailing upon Saturday, September 7th. I don't recall exactly which day amongst those four days this picture was taken. And that is [546] true of the other photographs. This picture was taken from a small boat forward of the "Sakito Maru" and looking aft, showing the bow of the vessel.

Mr. Cluff: And before any repairs or changes in the situation had been undertaken?

Mr. Adams: Yes. I do know now, and that recalls it to me, that it must have been taken the first or second day because repairs were immediately undertaken, temporary repairs, and these pictures were

(Deposition of T. Yokota.)

taken before any of the repairs were made. With that explanation, I offer that photograph in evidence.

Mr. Cluff: There is no objection as far as I am concerned.

Mr. Adams: May it be understood there are no objections unless voiced by counsel? The next photograph, Yokota's Exhibit No. 9 for identification, is a photograph taken under the same circumstances, showing the starboard bow of the "Sakito Maru" and particularly the two holes stove in the starboard bow; and, also, it shows the dent at the stem. I offer that in evidence.

Yokota's Exhibit No. 10, the next photograph, shows the port bow of the "Sakito Maru", the photograph being taken under the same circumstances. I offer that in evidence.

The next photograph, Yokota's Exhibit No. 11, is another photograph taken under similar circumstances, showing, again, the starboard bow and the damaged portion thereof. [547]

Mr. Cluff: It also shows a staging on the side or a floating stage.

Mr. Adams: Yes; with two men working on it. I offer that in evidence.

Yokota's Exhibit No. 13 is a photograph at closer range, showing the first hole from the stem stove in the starboard bow of the "Sakito Maru". I offer that in evidence.

Yokota's Exhibit No. 12 is another photograph taken under the same circumstances, showing the second hole from the stem of the "Sakito Maru"

(Deposition of T. Yokota.)

stove in the starboard bow. I offer that in evidence.

Yokota's Exhibit No. 14 is another photograph taken under the same circumstances, showing the port bow of the "Sakito Maru". I offer that in evidence.

Q. Mr. Yokota, following the collision and when the vessel was tied up at the Bethlehem yards and before repairs were made, did you examine the damaged portion of the bow? A. I did.

Q. Have you also examined these photographs, Yokota's Exhibits Nos. 8 to 14 inclusive?

A. I did.

Q. Do they correctly and accurately show the condition of the bow of the "Sakito Maru" as of the time that you made your examination?

A. They are the same. [548]

Q. Were the various holes stove in the port and starboard bow of the "Sakito Maru", as shown in these photographs, in existence prior to the collision?

A. There were no holes before the collision.

Q. Is that also true of this dent on the stem?

A. That wasn't there, either.

Q. And is that also true of the scrapings and other damage shown on the port side of the "Sakito Maru" at the bow, as demonstrated in Yokota's Exhibit No. 10?

A. It was not that way before the collision.

Q. Mr. Yokota, the gyro compass of the "Sakito Maru" is also equipped with a course recorder, is it not? A. Yes.

(Deposition of T. Yokota.)

Q. I show you what purports to be a record made of the course of the "Sakito Maru" for September 4, 1940, and ask you if that is the record made on the gyro compass course recorder of the "Sakito Maru" for that day. A. Yes; it is the same.

Q. That recorder records only the heading of the vessel, does it not? A. Yes.

Q. It does not record speed, does it?

A. No.

Q. It does record, however, the lapse of time, does it not? I mean that it shows the course of the vessel as of any given time? [549]

A. Yes; it does show the time.

Q. On the right-hand side of that record there are large figures, 1, 2, 3, 4, 5, 6, 7 and so forth.

A. Those are the numbers for the time, indicating the time.

Q. Those indicate the hours, do they not?

A. Yes.

Q. Between each figure indicating an hour there are five lines, are there not? A. Yes.

Q. And each one of those squares represents 10 minutes, does it not? A. Yes.

Q. Or, putting it another way, each line represents 10 minutes? A. Yes.

Q. What does that record show with respect to the course of the "Sakito Maru" from 1 o'clock a. m., September 4, 1940, until 7 a. m., September 4, 1940? A. 340 degrees.

Q. The line which closely follows the line marking 340 degrees gives some appearance of being zig-zagged. What causes that?

(Deposition of T. Yokota.)

A. That is on account of the swell or any waves that causes that.

Q. Those are slight variations in course normally [550] experienced in the steering of a vessel, are they not? A. Yes; always.

Q. According to that record, up until what time was the "Sakito Maru" on a course or 340 degrees true?

A. Just a little before 7:10 a. m.

Q. What does the line which runs to the left from the course 340 to the course 350 indicate?

A. That indicates when the bow of the ship turned.

Q. Does that indicate that the bow of the ship turned in one direction or the other 10 degrees?

A. It is about 10 degrees.

Q. And in what direction did the bow or heading of the ship turn 10 degrees?

A. It went from 340 to 350 to the right.

Q. That would be to the right or the starboard, would it not? A. Yes.

Q. After the line which indicates that change in heading, there is another line paralleling the line for 7:10 a. m., running from course 350 over to course 320. What does that indicate?

A. That is an indication that the bow of the ship turned.

Q. In what direction?

A. It is 320 degrees. That would make it the port.

Q. And what do you believe was the reason for

(Deposition of T. Yokota.)

the [551] change of the heading of the vessel to the port at that time? A. That I don't know.

Q. What was the time of the impact?

A. 7:10½.

Q. That line which we have just been talking about, according to this regulator, is made approximately as of 7:10½, is it not? A. Yes.

Mr. Black: Which line? The line from 350 to 320?

Mr. Adams: Yes.

Q. Beginning with the line where it intersects the course for 320, it zigzags from there over to a course for 360. What time was that line made, that is, between what times?

A. Between 7:12 and 7:28.

Q. What was the time that the engines were put full astern after the engines were stopped immediately after the impact? You may refer to the log book. A. At 7:13.

Q. What time was the anchor let go?

A. At 7:17.

Q. What is the next order executed on the engines after 7:17? A. 7:18, slow ahead.

Q. What is the next order executed with reference to [552] the engines at 7:18?

A. 7:19, stopped engines.

Q. The vessel rode at anchor, with her engines stopped, from 7:19 until noon, did she not?

A. Yes.

Q. Are the changes in the heading of the vessel, as shown on this gyro compass course recorder, from

(Deposition of T. Yokota.)

7:19 simply changes of heading of the vessel while she rode at anchor?

A. Yes; that is correct.

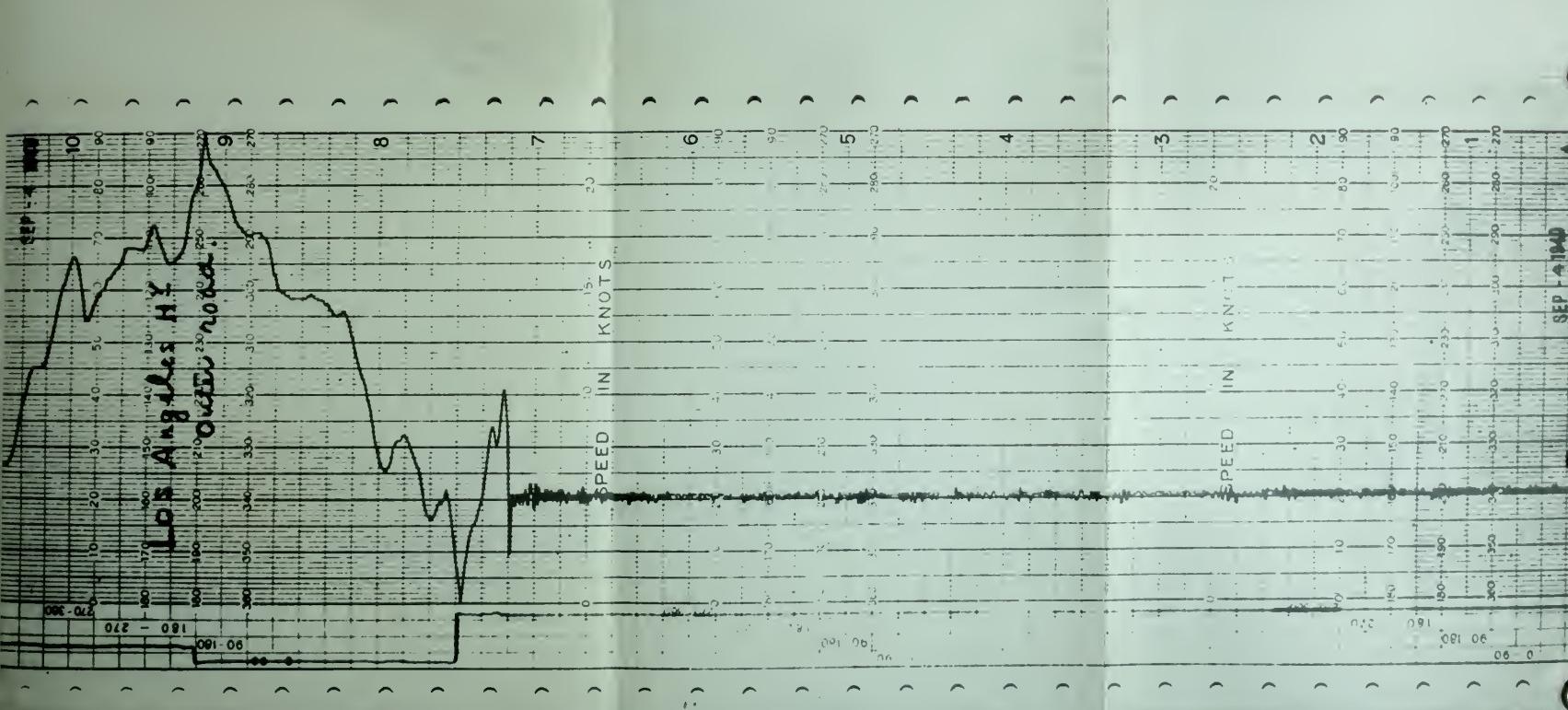
Mr. Adams: I would like to offer, in place of the original gyro compass recorder record, a photostat which I have had made of that record, showing from at least 1 o'clock a. m. until 10 o'clock a. m., September 4, 1940. Is there any objection to the offer of the photostat?

Mr. Purpus: Are you going to have the original in court?

Mr. Adams: Yes; I will.

Mr. Black: As long as it will be available in your office, I have no objection.

Mr. Adams: The witness says it is all right.



(Deposition of T. Yokota.)

Mr. Purpus: In other words, all of the papers you have introduced here today, for which you are putting in photostats, you will have at the date of trial?

Mr. Adams: I suppose so. I hoped it wouldn't be necessary to keep the log books unless there was some particular [553] reason for it. I have photostatic copies of the engine-room and deck logs and everybody is welcome to make a comparison at this time.

Mr. Purpus: The only purpose I have is, if something should arise in the meantime, I think it should be there at the date of trial.

Mr. Cluff: I think your point is well taken.

Mr. Adams: Of course, this occurred in the middle of a voyage and contains a great deal of operating data that I couldn't deprive them of. I left these log books aboard the ship after having made photostatic copies. It may be they are through with them and I would like to talk to the witness again off of the record about it.

Mr. Cluff: I would like to have the log books available.

(Discussion off the record.)

A. This is a record of the ship and we must keep them on board ship.

Mr. Purpus: The only point is, if it becomes material and if this man is not present on the day of trial, and one or the other of us would for some reason need this log book, it would place us in a

(Deposition of T. Yokota.)

bad position. You are going to use this deposition, as I understand, as the testimony of this witness, if he is not present at the trial.

Mr. Adams: That is right.

Mr. Black: Perhaps, if it were explained to the witness that it is not permanent but that the records can be [554] returned to the company after the case is over, it might make a difference.

Mr. Adams: I suppose so.

Mr. Black: Would you mind explaining that to him, Mr. Adams?

Mr. Adams: What our purpose and intent is, Mr. Yokota, is to keep the log books in our possession until after the trial is over and then return them to the company.

A. It is a record of the ship and we must keep them aboard ship.

Mr. Purpus: Now they are under the process of the court.

Mr. Adams: No; they are not unless someone issues process. I am willing to have photostatic copies made of any particular parts of the log books that anyone may want.

Mr. Purpus: As far as I am concerned, you can keep them here in your office until we are satisfied we do not need them.

(Discussion off the record.)

Mr. Adams: We will pass that up for the time being. Now, if there is no objection to the offer of the photostatic copy of the gyro compass record, I

(Deposition of T. Yokota.)

will retain the original gyro compass record in the office.

Mr. Purpus: There is no objection to that.

Mr. Adams: You may cross-examine.

Mr. Cluff: If it is agreeable to everybody, I will start out and then you gentlemen can pick up the pieces. [555]

Mr. Stearns: Before you start out, I would like to offer this statement, that, if Mr. Cluff is going to cross-examine, the questions and answers may be asked as far as I am concerned for Miss Mayo, with the right to ask any additional questions I may have.

Mr. Cluff: I take it that is understood among all of us; that the examination is not necessarily binding on anybody and that they may ask additional questions.

Mr. Adams: I want to make this statement. If other counsel avail themselves of the testimony elicited by questions asked by Mr. Cluff, I think it should be understood that they should be, likewise, bound by that testimony, that is, that you can't, after it is all over, sift it over and pick out those portions that you like and not be bound by those questions that you don't like.

(Discussion off the record.)

Cross-Examination

Q. By Mr. Cluff: Mr. Yokota, when was the course of 340 true first set?

A. On September 3rd.

(Deposition of T. Yokota.)

Q. September 3rd?

A. Yes; at 9:05 a. m.

Q. And did you have a land fall or other land position at that time on which that course was set?

A. San Benito Island light, northwest side of West [556] Island, abeam $14\frac{1}{2}$ miles. That is the time when we fixed the course.

Mr. Cluff: Will you read that answer back?

(Answer read by reporter.)

Q. And of course you were outside of the Island then?

A. Yes; outside.

Q. Was there any change in course up to the time you came on watch at 4 o'clock on the morning of September 4, 1940?

A. There was no change.

Q. That is, the course of 340 true was substantially made good right from the San Benito Island light to the point of collision?

A. Yes; the same.

Q. And was there any change in speed between the setting of that course at San Benito Island until the engines were slowed at 7:03 on September 4th?

A. We did not change the speed very much. There was a very little change in it on account of the waves and the swell.

Q. There was no change in the engines, that is, she continued on a course of full ahead and of 340 true from the hour and minute you have given us.

(Deposition of T. Yokota.)

when the San Benito light was abeam, up until 7:30 on the morning of September 4th?

A. There was no change. [557]

Q. Did you change the clocks at any time from taking that departure at San Benito Island until the time of the collision?

A. The clocks were retarded on September 4th at 2 a. m. 15 minutes.

Q. At 2 a. m. on September 4th?

A. Yes.

Q. They were retarded then 15 minutes?

A. Yes.

Q. That was the only change of the clocks from the San Benito Island departure?

A. That is all.

Q. After leaving San Benito, do you have any other land falls until you made the land fall off of the Coronado Islands to which you have testified?

A. That is all.

Q. Just San Benito and the next land fall you got was the Coronado Islands? A. Yes.

Q. The times that you have given here, Mr. Yokota, were taken from what clock?

A. The clock in the wheel house.

Q. Will you tell us just where in the wheel house that clock is located?

A. On the starboard side of the wheel house.

Q. Where with reference to the door leading out to the [558] starboard wing of the bridge?

A. Back of the door.

(Deposition of T. Yokota.)

Q. Right aft of the door?

A. Yes; back of the door.

Mr. Adams: I will state for the record that Mr. Cowell, after conferring with the master of the ship and the manager of the N. Y. K. Line, has told me that we may retain the log books in our possession until after the litigation is over.

A. As long as the captain says it is O. K., it is all right.

Q. By Mr. Cluff: It was the practice on the "Sakito Maru" for the apprentice officer to keep the scrap book or memorandum log, was it?

A. Yes.

Q. And where was he stationed at the time he was keeping that log? Did he keep it on a desk in the pilot house? A. On a table there.

Q. And from 7:03 on September 4, 1940, was he stationed at that table?

A. Right at 7:03 or after 7:03?

Q. From 7:03 up to the time of the collision.

A. He wasn't at the table all the time.

Q. He moved about in the wheel house, did he?

A. Sometimes he would put it in his pocket and sometimes he would hold it in his hand and make notations. [559]

Q. Are those little sheets kept on a pad or a block?

A. They are made in sort of a little book.

Q. When the apprentice officer makes those notations, does he do so on instructions from the watch officer in each case? A. Yes.

(Deposition of T. Yokota.)

Q. He doesn't make any notations at all unless he is specifically instructed by the watch officer, is that right?

A. Even without any orders from the officer on watch, on special occasions he makes notations himself.

Q. For example, if the order went out to slow the engines, he would make that notation as soon as he heard the order given, without any instructions, is that true? A. That is right.

Q. And he would take the time himself, that is, when he heard the telegraph ring, he would look at the clock and verify the time and put it down on his memorandum, is that right?

A. That is right.

Q. Does the clock have a second hand?

A. Yes.

Q. And is that a big second hand that covers the whole dial of the clock or just a small second hand like a watch? A. It is small.

Q. It is the practice, I think you said, to take the time within the half minute? [560]

A. Yes.

Q. And very often the apprentice officer is so far from the clock that he can't see the second hand and he will simply put down the time from the way the minute hand looks, close to the nearest minute, is that right?

A. Yes, because he can't see the second hand.

Q. As to these various bells to the engines to

(Deposition of T. Yokota.)

which you have testified and which you have read from the scrap book, you did not take those times yourself, did you?

A. No; I didn't make them.

Q. So, when you testified, for instance, that a bell was rung at 7:11, you were simply testifying from the notations in the log which were made by the apprentice officer? A. Yes.

Q. Is the apprentice officer, Mr. Kanda, now on the "Sakito Maru"? A. No; he isn't.

Q. Do you know on what vessel he is?

A. He went from the "Sakito Maru" to the "Toyohashi Maru". After that I do not know where he went.

Mr. Adams: I might state for the purpose of the record that we will take his deposition as soon as he is available.

Q. By Mr. Cluff: At 7:03, when you got within four or five miles, I think you said five miles, of the Los Angeles breakwater light, then you sent the apprentice officer to call the captain, did you? [561]

A. No; at 7 o'clock.

Q. At 7 o'clock, when you sent for the master, were there any signs of fog?

A. No; there was no sign of fog.

Q. No sign of fog at all?

A. It was a little misty away forward.

Q. What do you estimate the visibility forward at 7 o'clock? A. Three or four miles.

(Deposition of T. Yokota.)

Q. How long did it take the captain to come on the bridge after you sent for him?

A. Not a minute.

Q. After he arrived on the bridge, the first order he gave was at 7:03, was it? A. Yes.

Q. And that order was what?

A. Stand by engines and then, after that, slow.

Q. At that time, at the time that stand by was given, what was the condition of the weather with respect to fog?

A. There was a light fog.

Q. And that, I believe you said, was just ahead and was not on either side?

A. No; just in the front.

Q. At what time with reference to the stand by bell did the lookout, Mr. Shimada, go out on the platform on the forecastle head? [562]

A. Right after 7:03.

Q. That is, you saw him go out there and exchange with the apprentice seaman right after 7:03?

A. I did.

Q. How long prior to the time that he megaphoned that there was a ship ahead had he been standing there on the platform?

A. Do you mean Shimada?

Q. Shimada; yes.

A. About six or seven minutes.

Q. And do you know that of your own knowledge, do you?

A. Yes; I know that. But I didn't look at any watch.

(Deposition of T. Yokota.)

Q. Did he remain on that platform there right up in the bow of the ship or did he move from place to place on the forecastle head?

A. Just in the one position.

Q. How did Shimada know that it was his duty to go to the forecastle head as lookout?

A. Because it was his watch.

Q. And on each watch is the one man designated to go on lookout when he hears the whistle?

A. It depends on the hours that they have to go on watch.

Q. Your ordinary watch is four hours, is it not?

A. Do you mean the lookout men?

Q. That is, the officer and the quartermaster, the [563] apprentice and the lookout. Their tour of duty is four hours, is it? A. No.

Q. What is the period on the "Sakito Maru", the period of the watch?

A. Myself and the apprentice officer four hours and the two quartermasters divide up four hours, one hour apiece between them.

Q. How about the lookouts?

A. One hour.

Q. So in each four-hour watch there would be four men who successively would have the duty to act as lookout? A. Yes.

Q. Is there a station list maintained on the bridge so that the men know when their turn is and their hour is to act as lookout?

A. No; there is no such list.

(Deposition of T. Yokota.)

Q. Did the fog remain about the same and of the same density from 7:03 up to the time the lookout megaphoned that there was a ship ahead?

A. No; it got deeper and deeper or heavier and heavier.

Q. Did it get heavier rapidly or did it get dense very quickly after 7:03 or was it gradual?

A. Gradually.

Q. And at 7:03, when you put the lookouts out, you think the visibility was around three miles or so, do you? [564]

A. No; I think about two miles.

Q. About two miles at 7:03? A. Yes.

Q. At the time the lookout reported that something was ahead, what is your opinion of the visibility at that time?

A. About 200 meters.

Q. How do you determine that 200 meters? Is it by an estimate of the distance the barge was when you first saw it?

A. From my experience.

Q. How far away was the barge when you first saw it?

A. As I told you, 200 meters.

Q. I guess you didn't understand my question. I asked you, first, what was your estimate of the visibility at the time the lookout first reported.

A. 500 or 600 meters.

Mr. Adams: I would like to inquire whether you mean by that, Mr. Cluff, when the lookout

(Deposition of T. Yokota.)

first reported on the forecastle head or when he first reported to the bridge.

Mr. Cluff: I am directing my question to when the lookout first reported a ship ahead.

Mr. Adams: I would like to have that question put to the witness with that understanding.

Mr. Cluff: All right. Let me ask the interpreter to ask the witness what he understood by the question when the lookout first reported.

A. I don't understand that question. [565]

Mr. Adams: I ask that the witness be informed as to what you had in mind, Mr. Cluff, at the time you asked the question.

Mr. Cluff: The witness evidently didn't have any difficulty in understanding me then.

Mr. Adams: I think the question was confusing.

Mr. Cluff: I will ask the question again.

Q. What is your estimate of the visibility ahead at the time the lookout reported that a ship was ahead? I am asking for your estimate of the visibility from the bridge.

A. As I have already told you, I think between 500 and 600 meters.

Q. At the time the lookout reported that vessel ahead, I believe you, Mr. Yokota, were on the starboard wing of the bridge?

A. I think I was on the starboard wing of the bridge.

Q. Were any other of the watch on the outside of the bridge with you?

A. The captain was there.

(Deposition of T. Yokota.)

Q. And the quartermaster and the apprentice were inside of the wheel house, were they?

A. Yes.

Q. You and the captain were together, within a few feet of each other, were you?

A. I don't remember that.

Q. Where are the telegraphs, the engine-room telegraphs, [566] located on the bridge and wheel house?

A. On the port side of the wheel house.

Q. There are none on the wings of the bridge?

A. No; there are not any there.

Q. On the port side of the wheel house there are, I presume, two handles, one for the starboard engine and one for the port engine, are there?

A. Yes, sir; two handles.

Q. Upon seeing the barge ahead, you went at once to the telegraph, did you?

A. I ran there; yes.

Q. And you set the engines at stop?

A. Yes.

Q. You did that without a direction from the master? A. Without orders.

Q. And which engine did you stop first?

A. I don't remember.

Q. Was there any interval of time between stopping one engine and then the other?

A. About the same time.

Q. Will you give us your best recollection of the time that elapsed between the stopping of the

(Deposition of T. Yokota.)

engines, the first stopping of the engines, and setting them full astern?

A. Five seconds, I think.

Q. That setting of them astern, though, was on order from the captain, wasn't it? [567]

A. The stop signal was given about the same time that the captain gave his order and then I gave the signal and the full astern was given by the captain.

Q. When you say the full astern was given by the captain, was that an order or did the captain actually handle the telegraph?

A. I executed the order.

Q. Did you remain at the telegraph from then on?

A. No; I wasn't standing there all the time.

Q. After giving the full astern, the first full astern, how long did you remain by the telegraphs?

A. I don't think I stayed there at all.

Q. Do you remember where you went from the telegraphs?

A. I think I went to the port side.

Q. The port wing of the bridge?

A. Yes; the port side of the bridge.

Q. Outside of the wheel house?

A. Yes.

Q. And did the captain go there with you?

A. I think he went with me.

Q. Did anybody relieve you at the telegraph?

A. No; nobody.

(Deposition of T. Yokota.)

Q. Between the stop and full astern signals and the time of the collision was the apprentice officer making notations of those bells right at the time they were given?

A. Yes; he did. [568]

Q. So that as to the stop at 7:11 he wrote down on his paper immediately that that stop bell was given, is that right? A. He did.

Q. And the same would be true of the full astern notation at 7:13?

A. At that time I wasn't on the bridge.

Q. But you actually saw him make the notation or a note on his pad at 7:11, did you?

A. I saw him writing it or writing.

Q. At the time of the impact how deep into the side of the barge "Olympic II" did the bow of the "Sakito Maru" penetrate?

A. At that time everybody was excited, so I don't remember.

Q. At the time of the collision or at the time of the impact you were still on the port wing of the bridge, were you?

A. I think I was on the port side.

Q. Within half a minute after the collision, according to the log, the engines were then stopped, having been running full speed astern? Then they were stopped at 7:11?

A. It says here half a minute but I didn't look at any watch.

Q. Do you know who executed on the telegraphs the stop at 7:11 or thereabouts? [569]

(Deposition of T. Yokota.)

A. I did.

Q. Then, after executing that maneuver, did you proceed immediately to the forecastle head?

A. Yes.

Q. That was on the instruction of the captain or on your own responsibility, which?

A. On the order of the captain.

Q. In order to get on the forecastle head, you had to go down to the main deck? Do you make that passage downstairs inside the house or outside the house?

A. There are two ways; inside and outside. At that time I took the outside.

Q. How many flights of steps did you have to go down to reach the main deck?

A. From where?

Q. From the bridge. A. Three.

Q. That is, the bridge is three decks above the main deck? A. Yes; three.

Q. And then you proceeded, when you reached the main deck, to the break of the forecastle head?

A. Yes.

Q. Did you go over the hatches or around them?

A. At the side of the hatches.

Q. Do you remember which side, port or starboard? [570] A. Starboard side.

Q. Then you have a little distance to climb from the main deck up onto the forecastle head, a little ladder there, have you not? A. Yes.

Q. How much time do you estimate that it took

(Deposition of T. Yokota.)

you to go from the bridge up onto the forecastle head? A. About a minute.

Q. When you got on top of the forecastle head, where did you go? Where did you go when you got on the forecastle head? Did you go to one side or the other, where you could look over?

A. I went right to the bow.

Q. Right to the very bow? A. Yes.

Q. Was the lookout still in his place on the platform? A. No; he was not.

Q. Do you know when he left his place?

A. Yes; I do.

Q. When did he leave it?

A. Just a little before the collision.

Q. And where did he go?

A. He went down to the main deck.

Q. About how long before the collision was that that he left that place?

A. I can't tell you very well; possibly around 10 [571] seconds.

Q. When you got to the bow I take it you looked down on the deck of the "Olympic II", down below? A. Yes; I did.

Q. Do you have an impression as to how deep at that time into the side of the "Olympic" the bow had penetrated?

A. No; I don't remember at that time. There was too much excitement.

Q. At that time, when you first looked over the bow, was the bow of the "Sakito Maru" still against or in the side of the "Olympic"?

(Deposition of T. Yokota.)

A. It was separated just a little bit.

Q. That is, so that the "Sakito Maru" was beyond the side of the "Olympic", that is, was the whole bow of the "Sakito Maru" away from the side of the "Olympic" or was it still partly in the hole?

A. I know it was separated a little bit but I don't remember whether it was separated from the side or not.

Q. Did you stay there and continue to watch whether the separation increased?

A. I don't think it separated more than that.

Q. More than when you first saw it?

A. Yes.

Q. Did you hear or feel or know when the engines were put astern again after the stop bell following the impact?

A. Just a little bit. I felt it a little bit. [572]

Q. That is, you could feel the jar of the ship as the engines started to move astern, is that right?

A. I don't remember that.

Q. Have you any impression now as to whether you noticed that the engines were going astern after or before you reached the forecastle head and looked over the side? A. After.

Q. After you looked over the side or looked over the bow? A. Yes; after.

Q. Going back to the moment when the lookout reported the ship ahead, at that time you could see the barge rather covered in the mist but practically dead ahead, is that correct?

(Deposition of T. Yokota.)

A. Yes; I saw it.

Q. And how was the "Sakito Maru" headed with reference to the barge, that is, toward her bow, toward her stern or toward her amidships?

A. I think about the middle.

Q. Do you remember how many masts the barge showed? A. I don't remember.

Q. You couldn't tell us toward which mast of the barge the bow of the "Sakito Maru" seemed to point? A. I cannot tell that.

Q. But apparently the "Sakito Maru" was approaching the barge just about at a right angle to her port side? [573]

A. The port side of the barge?

Q. Yes. Was it the port side or the starboard side she was approaching?

A. It was the port side.

Q. And approaching just about at a right angle?

A. Yes.

Q. And you think the distance was about 200 meters? A. Yes.

Q. How soon after you first saw the barge would you say that the hard astarboard helm was executed on the "Sakito Maru"?

A. I think right away; as soon as I saw that there was no time at all.

Q. Which came first, the full astern on the engines or the hard astarboard on the wheel?

A. I have no recollection but I think it was about the same time.

(Deposition of T. Yokota.)

Q. Do you have on the ship any plot or diagram of her turning curve?

A. I don't think we have any.

Q. You don't think that any naval architect has ever plotted her turning curve or furnished the ship with any chart showing how she swings along a hard helm? A. No; they haven't got any.

Q. In your experience, would you say the "Sakito Maru" answers her helm about the same as any other modern ship of [574] about the same or a comparable type?

Mr. Adams: Just a minute. I object to the question upon the ground that no proper foundation is laid. There is no showing that the witness is familiar with all ships of modern design that Mr. Cluff has reference to. And I object to the question on the ground it is unintelligible.

Mr. Cluff: Maybe the witness understands it. Will you ask him if he understands the question?

A. Yes; I understand it.

Q. Will you answer it, please?

A. Yes. It answers to the helm about the same.

Q. Just normally, the way a vessel of like type would answer her helm?

Mr. Adams: The same objection.

(Short recess.)

A. Yes; in a natural way.

Q. By Mr. Cluff: How long after the hard astarboard helm did you first observe that she began to swing?

(Deposition of T. Yokota.)

A. Just a little before the collision.

Q. You first saw the barge about 200 meters away?

A. I think about 200 meters.

Q. Do you think it was possibly any more than 200 meters?

A. No; I think it was around 200 meters.

Q. Are you quite positive it wasn't as much as three or four hundred meters? [575]

A. No; it was not 300 or 400.

Q. You are quite definite it wasn't 300 meters?

A. No; it was not 300 meters.

Q. Now, how much of that 200 meters had the "Sakito Maru" covered before you noticed her begin to swing?

A. As I have already testified, just a little before the collision.

Q. At the time you noticed her begin to swing, was she as close as 50 meters to the side of the barge?

A. At that point I have no recollection.

Q. Did you first observe that she was beginning to swing within a minute after the hard astarboard helm? A. I cannot give you the time.

Q. Then, you cannot testify now how far away the ship was or how long it was before the collision when you first saw her begin to swing?

A. I can't tell you that. I have no recollection.

Q. When the "Sakito Maru" finally struck the barge, how far to the right was the point of impact

(Deposition of T. Yokota.)

from the point where she was heading before the "Sakito Maru" began to swing?

A. I have already testified I have no recollection as to that.

Q. Does it seem to you that the point of impact on the side of the barge, the actual point of impact, was about the same place as the point toward which the bow of the "Sakito Maru" was heading when you first saw the barge? [576]

A. Yes; I think so.

Q. So, as far as you can tell, she didn't swing at all? She didn't swing to the right?

A. I think it swung a little bit.

Q. But so little that you can't give us any estimate of how much?

A. No; I have no recollection.

Q. Nor can you tell when the swing began?

A. No; I cannot.

Q. After you first saw the barge as you approached, as you said on your direct examination, you said you saw another small vessel?

A. I didn't see any at that time.

Q. When did you first see this small vessel?

A. After I went to the forecastle.

Q. That was after the collision that you first saw the small vessel? A. Yes.

Q. Up to the time of the collision did you see any other vessels of any kind in the vicinity except the barge? A. I didn't see any.

Q. After the collision did you see any other ves-

(Deposition of T. Yokota.)

sels besides the barge and the little vessel that was lying alongside of her?

A. After awhile the Coast Guard or something like that came there. [577]

Q. Didn't you see another barge, a masted barge, lying just beyond the "Olympic II" and just about in a line with the course of 340 true?

A. Not at that time.

Q. Subsequently you did see one, didn't you?

A. After awhile, I was able to see it.

Q. How many other barges did you see in the vicinity there? A. Another one.

Q. As a matter of fact, after the collision, didn't you see two barges besides the one that was sunk?

A. Only one.

Q. Do you know what the name of that other barge you saw was?

A. No; I have no recollection.

Q. If I suggested that her name was the "Pt. Loma", does that refresh your recollection?

A. No; I have no recollection.

Q. Are you sure that the barge that the "Sakito Maru" hit was the same barge as the one you saw when the lookout reported?

A. I think it was. It was the same shaped barge.

Q. Can you be absolutely positive that the barge that you hit was the same barge that you saw when the lookout first reported a ship ahead?

A. I only think that. [578]

Q. What is it that makes any doubt in your mind?

(Deposition of T. Yokota.)

A. Because I haven't made a sketch of it or taken a photo of it.

Q. From the time the lookout first reported until the collision did you take your eyes off of the barge ahead for more than a second or two at a time?

A. I did not continue looking at it.

Q. How much time do you think elapsed or for how long a time did you not look at the barge?

A. I watched the barge right from the beginning that the report was given until the collision.

Q. Do you think it is possible that the first barge the lookout saw was the "Pt. Loma" and that the turn to the right avoided that barge entirely?

A. No; positively not.

Q. That is quite impossible?

A. I am positive.

Q. You say you think it took about three minutes from 7:03 to decelerate the speed from her normal 16 knots to about 6½ knots? Did I understand you correctly?

A. I think it took about three minutes.

Q. Have you ever made any experiments or tests with the ship or taken any readings or bearings to ascertain how long it takes for her to slow down to 6½ knots when you go from full speed ahead to slow ahead? A. No; I have not. [579]

Q. Were you able to see the land on the starboard side as you approached the "Olympic"?

A. No; you couldn't see it.

Q. And by that time could you see Catalina on the port side?

(Deposition of T. Yokota.)

A. I didn't look back of me.

Q. So on either side and ahead you could see no land at all from 7:03 on?

Mr. Adams: I object to that question upon the ground that is not what the witness testified to. He said he didn't look back on the port side.

Mr. Cluff: I didn't ask him that. Read the question.

(Question read by reporter.)

Mr. Cluff: He said he didn't look back and I asked him if he could see on either side or ahead.

Mr. Adams: I object to the question as partly already asked and answered.

Mr. Cluff: Let's have an answer to the part he hasn't answered.

Mr. Adams: If you confine your question to that, I have no objection.

Q. By Mr. Cluff: I will get at it in this way. From 7:03 on you were on the outside of the bridge and you were keeping some lookout yourself?

A. Yes.

Q. You were keeping that lookout pretty steadily from [580] 7:03 on until the lookout reported the barge ahead? A. Yes.

Q. You were keeping watch straight ahead?

A. Yes; on either side and ahead.

Q. Either side and ahead? On the starboard side as far as your beam, anyhow? A. Yes.

Q. Could you see any land in any of the directions in which you looked at any time from 7:03 on to the point of collision?

(Deposition of T. Yokota.)

A. I couldn't see anything.

Q. At any time during your watch did you pass or were you passed by any other steamer proceeding in the same direction as the "Sakito Maru"?

A. No; I didn't see any.

Q. At any time during the whole watch, that is, from the time you took the bridge until the collision, there were no other steamers that came in sight of the "Sakito Maru", is that right?

A. I didn't see any.

Q. Did you hear the whistles of any other vessels? A. I did not.

Q. At any time? A. Not at any time.

Q. And you heard no bells until after you had sighted the barge? [581] A. I did not.

Q. And after you sighted the barge, you did hear the continuous ringing of the ship's bell?

A. No; when I first saw it, I did not hear it.

Q. How long after you first saw it did you first hear the ringing of this bell?

A. I haven't got a definite recollection but about half a minute, I think.

Q. About half a minute after you first saw her?

A. I think about half a minute.

Q. And did the sound of that bell seem to come from the barge? A. I think so.

Q. As you approached the barge, could you see any man on board ringing the bell?

A. I did not see any.

Q. Did you see any bell?

A. No; I did not.

(Deposition of T. Yokota.)

Q. I wonder if you will explain the manner in which you took the bearing at 5:20, that is, the first bearing you took on Santa Catalina. That was, as I understand it, just a 1-point bearing?

A. 1-point.

Q. This testimony, Mr. Yokota, will go before a judge who is unfamiliar possibly with just how these bearings are taken. So will you please explain just how you take the [582] bearing and work the computation to fix the ship's position?

A. Do you mean right here, right now?

Q. Yes. Just explain it. A. I can.

Q. Will you do so, please?

A. This, we will say, is the gyro compass and then the markings there are from zero to whatever the degrees are. It is a little larger than this.

Mr. Adams: "This" signifies an ash-tray on the table.

Mr. Cluff: Let the record show that the witness is referring to a circular ash-tray on the table.

A. And at right angles is a shadow pin in the center of it and it is a very narrow, thin shadow pin. It is about as large as the lead of a pencil and that is in the center at right angles. Then I look from the shadow pin, through the shadow pin, to the object I am to view and then I read.

Q. What the degrees on the compass show, that is, do you mean that the shadow of the pin is cast on the compass to show the reading of the degrees?

A. No; not the shadow. I look through the shadow

(Deposition of T. Yokota.)

pin to an object I have in view. Have you got a piece of paper?

Q. Yes.

A. The shadow pin is right there in the center and then from there is zero to 360 or whatever the degrees are. The observer stands right there and looks at the shadow pin. [583] And here, we will say, is the Island of Santa Catalina and the point there is brought in a straight line with the shadow pin and at the same time I read the degrees on the face.

Q. The degrees on the face of the compass?

A. Yes.

Q. And then, having taken that reading, how do you determine the position of that ship?

A. Then I find that on the chart.

Q. By projecting the line of the compass bearing from the object which you see? A. Yes.

Q. You project that line until it intersects the line of the course and that gives you the ship's approximate position, is that right?

A. That is the ship's course there and by taking just one bearing you can't tell whether the ship is there or this other point but, if there are two objects, that quotient indicates the ship's position where the line crosses.

Q. A 1-point bearing is simply a line from the object where it intersects the projected course of the ship, is that right?

A. I can't tell you that. You have to take two points to determine the position of the ship.

(Deposition of T. Yokota.)

Q. So the 1-point bearing which you take won't determine the position of the ship but simply the position of the object? [584]

A. Yes; that is right. You have to take two points to determine the position of the ship.

Q. When you take two points, that means you have a bearing line from each point and where those bearing lines intersect at the point of observation fixes the position of your ship, is that right?

A. That is right.

Q. Getting back to the time of the collision again, from 7:03 on you were keeping lookout, as you have testified, both forward and on both sides of the bow? A. Do you mean after 7:03?

Q. After 7:03.

A. I didn't see anything excepting the barge after 7:03.

Q. No. I say after 7:03 you were keeping lookout on the wing of the bridge and looking both dead ahead and on both sides of the bow?

A. After 7:03?

Q. Yes. A. No; only forward.

Q. And you were keeping lookout forward, of course, to see if there was going to be any vessel ahead of you in the fog, is that right?

A. You will have to repeat that question again.

Q. Let's see if I can rephrase it. I say what you were doing at the time was keeping a lookout for other vessels? [585] A. Yes.

Q. And the fog was getting denser?

A. Do you mean after 7:03?

(Deposition of T. Yokota.)

Q. After 7:03. A. Gradually; yes.

Q. So that the visibility ahead decreased from about two miles to five or six hundred meters, is that right? A. Yes.

Q. And, of course, as the visibility got worse, you were taking more care to keep a lookout?

A. Just a minute. No. As I have already testified, I made a mistake. At 7:03 I looked forward and on both sides.

Q. The purpose of that was to watch for other vessels that might be in the way of the "Sakito Maru"? A. Yes.

Q. And you were watching very carefully as this fog got heavier? A. Yes.

Q. So, now, when the visibility lessened, it finally got so that when the lookout reported this ship ahead that visibility was down to five or six hundred meters?

A. Until I was able to see, I think that was about the distance.

Q. And the captain was also keeping lookout there somewhere on the bridge itself?

A. Yes. [586]

Mr. Adams: I would like to have the previous question and answer read.

(Record read by reporter.)

A. Will you repeat that answer?

(Answer read by reporter.)

A. Before I was able to see the barge, I think I could see at a distance of about 500 or 600 meters.

(Deposition of T. Yokota.)

Q. By Mr. Cluff: And the apprentice officer inside of the wheel house, in such time as he had free from his other duties, was also keeping lookout, was he?

A. Yes; when he wasn't occupied, he was also a lookout.

Q. And then the sailor all this time was on the forecastle head?

A. Yes; standing there right along.

Q. Mr. Yokota, will you explain how it was that you didn't see that barge when you were five or six hundred meters away?

Mr. Adams: I want that question read, please.

(Question read by reporter.)

A. When I said that I could see 500 or 600 meters ahead of me, I made a mistake because I couldn't see that far.

Q. By Mr. Cluff: Then, you want now to change your testimony about the visibility being five or six hundred meters at the time the lookout reported the barge ahead?

A. No; I won't change it.

Q. You still think that is what the visibility was? [587]

Mr. Adams: I object to that question upon the ground that is not what the witness testified to. He said that before he was able to see the barge he believed that he could see 500 to 600 meters.

Q. By Mr. Cluff: After you saw the barge, do you have any reason to change that estimate now?

(Deposition of T. Yokota.)

A. When I saw the barge, it appeared to me it was very close.

Q. Is it still your testimony that when you first saw the barge it was not more than 200 meters away?

A. Yes, because in my opinion, it was very close. It seemed to be very close.

Q. And is it still your testimony that at the time the barge was reported, in your opinion, the visibility was five or six hundred meters?

Mr. Adams: I object to that question upon the ground that is not yet what the witness testified to.

Mr. Cluff: I will submit it and stand on the record and I will ask that the question be answered.

A. My testimony is just before that I think I was able to see that distance.

Q. Just before that?

A. That is only my belief.

Q. Now, is it your testimony that the fog suddenly thickened in the few seconds just before the lookout reported? [588]

A. Possibly it was so.

Q. Possibly that happened but did you see at the time any sudden thickening of the fog?

A. No; at that time I couldn't tell.

Q. This 200-meter figure is simply your best estimate, based on your experience, and it might have been considerably more?

Mr. Adams: I object to that as already asked and answered several times.

(Deposition of T. Yokota.)

Mr. Cluff: I will press for an answer.

Mr. Adams: I will instruct the witness not to answer the question.

Mr. Cluff: I will ask the notary to instruct him to answer the question.

The Notary: You are advised to answer the question. A. I refuse to answer.

(By agreement of all counsel present, a recess was taken, at the hour of 6:10 p. m. until the hour of 7 o'clock p. m. of the same date.) [589]

Wednesday, June 4, 1941
7 o'clock p.m.

(Pursuant to agreement, the taking of the depositions of the witnesses hereinbefore named was resumed, with the same parties present.)

Q. By Mr. Cluff: Mr. Yokota, except for the smooth log there which you have before you, these little memorandum slips are the only original entries that you keep on the bridge?

A. That is all.

Q. That is, the apprentice officer on watch keeps a little memorandum slip during his watch like Yokota Exhibit No. 2? A. Yes.

Q. And then, when the watch is over, the smooth log is made up by the officer and the apprentice from this memorandum and from their memory of any-

(Deposition of T. Yokota.)

thing that is not included in there? A. Yes.

Q. One of the gentlemen here is interested in this entry in the smooth log Exhibit No. 3, where, under the entry "7:19", there is a little dotted line around the figure "7:19". Will you explain what that means?

A. That is two separate navigating hours, the hours under way and the hours at anchor.

Q. Just one other question about the chart Exhibit No. 1, the chart on which your courses were plotted. That was [590] the chart that you were using as a navigating chart in the hours of your watch prior to the collision, is that right?

A. Do you mean this chart here?

Q. Yes. A. Yes.

Q. Will you state for the record when the course of 340 true was laid down and the westerly correction made when you had the light abeam? When were those lines made with reference to the collision?

A. Do you mean when this line was put in there?

Q. Yes. First, when the main line and then when the corrected line were put in.

A. The line is put there when the bearing is taken.

Q. As to the first line, you simply laid down your course from your last departure at Coronado? You made that on the chart? A. Yes.

Q. That was before the collision?

A. Surely.

Q. And then, after you took the beam bearing

(Deposition of T. Yokota.)

here, the second line to the left is the correction of your course on account of the adjustment of dead reckoning from the bearing? A. Yes.

Q. And that corrected line was put on the chart before the collision? [591] A. Surely.

Q. That was right after you took the beam bearing there?

A. No. I drew it from that point there.

Q. Indicating the beginning of the line?

A. Yes.

Q. As to the various bearing marks which you have identified, as you testified, you used this chart as a working chart and these are your actual locations on the chart at the time your bearings were taken?

A. Yes.

Mr. Cluff: I have no further questions.

Mr. Black: Shall I proceed with my few questions?

Mr. Adams: Yes.

Q. By Mr. Black: Mr. Yokota, I think you stated that at 7:03 you received instructions to ring up stand by and then slow ahead on the telegraphs?

A. Yes; I did.

Q. And that you also blew a fog whistle at that time pursuant to the captain's orders?

A. Yes.

Q. Which did you do first? Did you ring up on the telegraph or did you start blowing the air whistle first?

A. I have no recollection which I did first.

(Deposition of T. Yokota.)

Q. How long an interval was there between the stand by and the slow bell?

A. I don't think there was any time elapsed at all; [592] possibly around 10 seconds.

Q. Did you wait for a reply to the stand by bell before you rang slow ahead?

A. We get a reply in about a second or two seconds right after we give the signal.

Q. My question was did you get your reply from the engine-room to your stand by bell before you rang up slow?

A. I don't remember such details.

Q. What is your usual practice? Is it not the fact that you usually await a reply from the engine-room on one signal before you attempt to give another signal?

A. That is the usual method.

Q. And there was no emergency at that time that would require any different practice to your knowledge, was there?

A. Yes; there was no emergency.

Q. So that the probabilities are that you got your answer from the engine-room to the stand-by signal before you rang up slow?

A. That I don't remember.

Q. Can you tell me how long a period of time there was between the report of the lookout that there was a ship ahead and the time that you first saw the barge yourself?

A. Very slight; about five seconds.

(Deposition of T. Yokota.)

Q. And, when you saw the barge, you state it was at a distance of what you believe was 200 meters? A. Yes. [593]

Q. Does that mean 200 meters from the bridge where you were standing or an estimated 200 meters from the stem of your vessel?

A. From the place I was standing on the bridge.

Q. And I think you testified that the distance from the bridge to the stem of your vessel was 65 meters? A. About that.

Q. So that that would mean that the barge was approximately 135 meters away from your ship, from the farthest point forward of your ship, when you first saw it? A. About that; yes.

Q. How long a period took place from the time that you saw the barge until you rang up stop on the telegraphs?

A. I don't think there was any time at all.

Q. Just the length of time it took you to run from the wing of the bridge to the port side where the telegraphs are, is that right?

A. About a second or two.

Q. Did you get an answer to the stop bell before you rang up full astern?

A. That I don't remember.

Q. How long a period was there between the time you rang stop until the captain told you to ring full astern?

A. About five seconds, I think.

Q. Referring to the ship's gyro record, Mr. Yo-

(Deposition of T. Yokota.)

kota, which is Exhibit No. 15, I think you have already testified [594] that the large numbers on the right-hand side of the page are intended to indicate the clock time of the various headings of the ship?

A. Yes.

Q. You also testified that at 2 o'clock in the morning of September 4th the clocks were retarded 15 minutes? A. Yes.

Q. What method do you use on your vessel to synchronize the gyro course recorder with the ship's time?

A. When we correct the time, we compare it with the record of the gyro.

Q. Is it not the fact that it is necessary to turn back the roll in some way when you retard the clocks to make it coincide with the time shown on the course recorder? A. Yes.

Q. Is that done manually by simply releasing the roll and turning it back so that the two pens coincide with the clock time?

A. Yes; roll it back with the hand.

Q. I notice on this exhibit that about opposite the line "2 o'clock" we see a heavier ink line which looks as if the course was run over twice, which might have resulted from the operation of rolling the paper back to coincide with the clock of the ship. Is that the correct deduction from that?

A. Yes; it got double at that time. [595]

Q. And that is because you rolled the recorder back to coincide with the recording of the clocks?

A. Yes.

(Deposition of T. Yokota.)

Q. And, when you advance the time, you must, necessarily, in the same way, roll the machine the other way? A. Yes.

Q. That, of course, cannot be done accurately to the second in a device with only a quarter of an inch to show 10 minutes? You have to estimate it to some extent, is that not correct?

A. Yes; it must be estimated.

Q. So that you cannot depend on the course recorder being right to the second in line with the ship's clocks?

A. No; you cannot adjust it right to the second.

Q. But the elapsed time between the horizontal lines indicating 10 minutes is a uniform rate that depends on the maximum of the course recorder itself, is that not correct?

A. Will you repeat that question?

Q. Perhaps I can make it simpler. The speed of this paper through the machine depends on the clock work in the machine itself?

A. Yes; that is correct.

Q. So that it does represent very accurately the length of time the vessel is on a particular course?

A. Yes.

Q. Although the correspondence to the ship's time may [596] not be exact?

A. No; you cannot adjust it to the second.

Q. Do you recall when the helmsman gave a hard right rudder, at or shortly after 7:09, whether he kept that right rudder until the time of the collision? A. Yes; he did.

(Deposition of T. Yokota.)

Q. You are sure of that? A. Positive.

Q. So that the vessel under those circumstances could not possibly have swung to the left at any time before the collision? A. No; it could not.

Q. So that the collision must, necessarily, therefore, have occurred between the time the vessel started to swing to the right, as shown by the gyro compass, and the time when the vessel reached a heading of 350, as shown by this exhibit?

A. I think it was about that time.

Q. In other words, the vessel could not possibly have reversed that swing and started to swing to the left before the collision occurred?

A. No; it could not.

Q. So that you can't say definitely, from the basis of this course recorder, that the collision must have occurred between the time the vessel left her heading of 340 and some time until she reached her maximum right swing of 350? [597]

A. Do you mean when the ship swung to the right between 340 and 350 degrees, that that is when the collision occurred?

Q. Either at the beginning or at the end or somewhere in the middle. A. Yes; I can say that.

Q. What method do you have on your vessel for making the engine-room and the bridge time correspond?

A. When we correct the time of the clock say at 2 o'clock, all clocks are set to that time on the ship.

(Deposition of T. Yokota.)

Q. The officer on watch, I take it, signals to the engine-room and gets the clocks in order?

A. No; the quartermaster adjusts his clock and then goes around and adjusts all of the clocks.

Q. Including the engine-room clocks?

A. Yes.

Q. Whose duty is it to adjust the course recorder to the change in time?

A. The officer on watch.

Q. What officer was it that stood the midnight to 4 a. m. watch? A. The second officer.

Mr. Black: That is all.

Mr. Clough: That is all. No further questions.

Q. By Mr. Eastham: Mr. Yokota, calling your attention to this Exhibit No. 1, when did you get that? [598] A. Do you mean when?

Q. When; yes.

A. What do you mean by when did I get it?

Q. What day, month and year.

Mr. Adams: Do you mean, Mr. Eastman, what time they bought the chart?

Mr. Eastham: Yes; when did they get it on board the ship? A. When it was new?

Q. Yes. A. That I don't know.

Q. You don't know whether that is the last chart put out by the Coast and Geodetic Survey, do you?

A. That I don't know. There is no date on here.

Mr. Adams: There is this date here. Let the record show that there is a rubber stamped date on the chart, August 21, 1931.

(Deposition of T. Yokota.)

Q. By Mr. Eastham: Who put that date on there, do you know?

A. I don't know. I think it was the second officer.

Q. Don't you know that there was a later chart, for the same area, obtainable from the Coast and Geodetic Survey? A. I don't know.

Q. Do you know if your company tries to supply your ships with the latest charts of this kind?

A. Yes. [599]

Q. But you don't know if that is the latest chart of that area, do you?

A. That is the duty of the second officer.

Mr. Eastham: I think that is all.

Mr. Cluff: Before you resume the redirect examination, I want to ask some more questions.

Q. Mr. Yokota, how long have you been running in Pacific Coast waters, running into the port of Los Angeles?

A. Before that I made one voyage.

Q. Was the previous voyage you made your first voyage into the port of Los Angeles?

A. Quite previous to that I came here once.

Q. And did you come up on that trip on the "Sakito Maru"? Was that the previous trip of the "Sakito Maru"? A. No.

Q. What vessel was it?

A. The "Tatsuno Maru", about nine years ago.

Q. But this trip on September 4th as you approached Los Angeles was the first time you had approached these waters for nine years?

(Deposition of T. Yokota.)

A. No. I came once again on another voyage before that.

Q. When was that second voyage that you came?

A. That is the voyage before the collision.

Q. And that was on the "Sakito Maru"?

A. Yes. [600]

Q. Was the previous voyage of the "Sakito Maru" from Japan to New York and return via the Canal?

A. Do you mean the time of the "Tatsuno Maru"?

Q. No. I am talking about the previous voyage of the "Sakito Maru".

A. It was the same voyage.

Q. It was the voyage to New York on which you were returning at the time of the collision?

A. Surely.

Q. Before that eastbound voyage, what had been the voyage of the "Sakito Maru"?

A. It was New York.

Q. She made one previous round voyage to the Orient before this one, is that correct?

A. It was the same course.

Q. I am trying to get the number of voyages that you had made from the Orient to New York on the "Sakito Maru" before the collision.

A. What do you mean by the same?

Q. You joined the ship in December, 1939?

A. Yes.

Q. What was the first voyage you made from Japan and back there?

(Deposition of T. Yokota.)

A. To New York and back.

Q. By Los Angeles? A. Yes. [601]

Q. Did you call at Los Angeles both ways, both going to New York and coming back?

A. Yes.

Q. Now, can you fix the dates of the calls at Los Angeles on that first voyage beginning in January, 1940?

A. That I don't remember. I think it was about the end of February or the beginning of March.

Q. That would be going which way, east or west?

A. To New York.

Q. Going to New York? A. Yes.

Q. And you came back and called at Los Angeles, going back to the Orient? A. Yes.

Q. And can you fix the month of the call at Los Angeles when you were coming back?

A. I don't remember that date.

Q. Can you fix the date of your arrival back in Japan on the first voyage of the "Sakito Maru"?

A. I don't remember.

Q. Was the voyage on which the collision occurred the second round voyage that the "Sakito Maru" made or the third or fourth round voyage?

A. The second.

Q. So you had been in Los Angeles on the "Sakito Maru" three times prior to September 4, 1940? [602] A. Yes.

Q. You called at Los Angeles eastbound, on the eastbound passage of the ship, and can you fix that date? A. I don't remember.

(Deposition of T. Yokota.)

Q. Can you refresh your recollection from the log? A. It is not in this log.

Mr. Adams: Let the record show, Mr. Cluff, this log begins with July 27, 1940, from Cristobal to New York.

Q. By Mr. Cluff: It is probable, is it not, Mr. Yokota, that, if you were in Cristobal or shortly out of Cristobal on July 27th, the ship was in Los Angeles some time around July 1st to 10th?

A. Yes.

Q. With that date before you, it must have been that you were in Los Angeles, on the way down to Cristobal, some time around the 1st of July, isn't that right?

A. I think it would be around July 15th.

Q. Do you remember what time of day you left Los Angeles southbound on that passage to New York?

A. I just told you I think it was around July 15th.

Q. But I asked you what time of day. Did it leave in the morning or at night?

A. That I don't remember.

Q. Do you remember on any occasion, when you have been in the port of Los Angeles before, of seeing fishing vessels anchored at about the point that this collision took place? [603]

A. I didn't know that.

Q. You make the same course on each voyage, that is, practically you start out on the reverse of

(Deposition of T. Yokota.)

340 going south and come up about on 340 from the Coronado Islands coming north? A. Yes.

Q. The same course both ways? A. Yes.

Q. Do you know if any other officers of the ship had frequently run in and out of the port of Los Angeles? A. I don't know.

Mr. Cluff: That is all.

Q. By Mr. Montgomery: Do you know where the master, who was in charge of the "Sakito Maru" on the date of the collision, is today?

A. When I left Japan, I think he was on the "Bengal Maru".

Q. Has he ever put in at Los Angeles Harbor?

A. Not that ship.

Q. Do you know whether he had ever been in command of a vessel coming into Los Angeles Harbor before the date of the collision?

A. That I don't know.

Q. Had he been with you on the previous voyage when you had been to Los Angeles?

A. No. [604]

Mr. Montgomery: That is all.

Mr. Adams: Are there any further questions on cross-examination?

Mr. Clough: That is all.

Redirect Examination

Q. By Mr. Adams: Mr. Yokota, on the day that the "Sakito Maru" left Los Angeles Harbor east-bound for New York in July, you do not recall, do you, the exact time of departure from Los Angeles Harbor? A. No; I don't remember.

(Deposition of T. Yokota.)

Q. Do you remember whether it was in the daytime or nighttime?

A. No; I have no recollection.

Q. Do you know whether, after the breakwater light was passed, you were on watch or not?

A. I have no recollection at this time.

Q. Do you know whether or not you might have been in bed asleep? A. Possibly so.

Q. Do you recall having seen any fishing barges anchored in the vicinity where the "Olympic II" was at any time on any of your prior calls at Los Angeles Harbor?

A. I don't think I saw it on the previous voyages nor did I pay any attention to it or notice it.

Q. Referring to Yokota's Exhibit No. 15, which is the [605] record of the course recorder, and directing your attention to the question asked you by Mr. Black concerning the significance of this line running from course 340 over to course 350 at about 7:10 a. m., this line, Mr. Yokota, which we have just mentioned only shows the change in heading of the vessel as that change was being made, is that correct? A. That is correct.

Q. When this line leaves course 340, it is only when the hard astarboard rudder begins to take effect, isn't that correct? A. Yes.

Q. It does not mark the time, necessarily, when the helmsman put the wheel hard over, does it?

A. No; it doesn't.

Q. Do you know how long it takes after the

(Deposition of T. Yokota.)

wheel is put hard over before the rudder takes effect and the vessel starts swinging?

A. That depends on the speed of the ship.

Q. It depends upon the speed of the ship?

A. Yes.

Q. When the speed of the ship is slow ahead, the effect of a hard right rudder is felt a longer time or felt slower than when the vessel is going at a faster speed, isn't that correct?

Mr. Black: That is objected to as leading.

Mr. Adams: I will withdraw the question. [606]

Q. When is the effect of a hard right rudder felt most? Is it when the vessel is proceeding slow ahead or when the vessel is proceeding full speed ahead?

A. The faster the speed the faster the rudder answers.

Q. Mr. Yokota, I believe you testified that after the barge was sighted you ran into the wheel house and put your hands on the telegraph handles and gave a signal on the telegraphs to stop the engines?

A. Yes.

Q. Before you executed that order on the telegraphs, did the captain give any order?

A. I think it was about the same time.

Q. And what order did the captain give at the same time? A. Stop.

Q. And did he then give another order immediately thereafter?

A. Yes; right away after that.

Q. And what was that order?

(Deposition of T. Yokota.)

A. Full astern.

Q. In answering the questions put to you about the distance that the barge was from the place where you were standing when you first saw the barge, is that simply an estimate made by you as of that time? A. That is only my estimate.

Q. How long did you continue to look at the barge after the lookout called and you raised your head and saw the [607] barge yourself? I will withdraw that question. How long did you continue to watch the barge after you first sighted the barge?

A. Right up to the collision.

Q. How long did you continue to watch the barge, after you first sighted her, before you went into the wheel house and worked the telegraphs?

A. I don't think there was any time elapsed at all; about one or two seconds.

Q. Was it during that period that you formed the estimate as to how far distant the barge was?

A. Yes.

Q. Before you saw the barge, how far ahead did you believe you could see from the bridge?

A. Before that, it was my belief that I could see about 500 meters.

Q. It was your belief at that time, before you saw the barge, is that correct? A. Yes.

Q. After you saw the barge, which, as I understand it, you estimate was 200 meters away at the time you saw it, did you believe that your former belief was inaccurate?

(Deposition of T. Yokota.)

A. It was either my mistake or the suddenness of the fog coming in or the suddenness of the fog around the barge.

Q. In other words, either you had thought the [608] visibility was farther than it was or the visibility was that far but the fog suddenly came in around the barge and reduced the visibility, is that correct?

A. That I don't know. As I have already testified, it was either my mistake or it was on account of the fog.

Q. When you say it was on account of the fog what do you mean by "on account of the fog"?

A. Well, we were running forward. The fog was very light. Possibly it was thick around the barge or possibly my figuring was wrong.

Q. Referring you to Yokota's Exhibit No. 3 for identification, opposite the printed words "Chief Officer" on that exhibit there is a signature. Whose signature is that?

A. That is my signature.

Q. When did you sign that?

A. After the log book was made up.

Q. Did you examine the entries on the log book before you signed it? A. Yes.

Q. Mr. Yokota, after the engines were put full astern at 7:09, was there any signal sounded on the whistle to indicate that the engines were going astern?

A. The captain gave the order to the apprentice officer.

(Deposition of T. Yokota.)

Q. And what order did he give the apprentice officer? A. To blow the whistle three times.

Q. Did the apprentice officer do so? [609]

A. Yes.

Q. Do you recall hearing three blasts on the whistle at that time? A. Yes.

Q. As I understand your testimony, after you first sighted the barge, you continued to watch the barge up until the time of the collision?

A. Yes.

Q. Was the barge that you first sighted the barge that the "Sakito Maru" struck?

A. There is no mistake. It is the same.

Q. Are you positive about that?

A. Positive.

Q. Did Mr. Shimada work a watch during the daytime? A. What watch do you mean?

Q. I will withdraw that question. What were the hours of work of Mr. Shimada on September 4, 1940?

A. The usual cleaning up of the houses.

Q. What were the hours of work?

A. 6:30 a. m.

Q. And how long did he work?

A. Until the fog set in.

Q. What were his regular hours of work?

A. From 6:30 to 8 a. m. and from 9 to 12 and from 1 to 4 p. m.

Q. Was he a member of the deck crew? [610]

A. Yes.

(Deposition of T. Yokota.)

- Q. Do they stand watches? A. Yes.
Q. Do they stand watches during the daytime?
A. Do you mean as a lookout?
Q. During their regular work.
A. Yes; they do.

Mr. Adams: No further questions.

Recross-Examination

Q. By Mr. Black: Just one more question. Do you know whether the barge sank before or after you dropped your anchor?

A. It was after that it sunk.

Q. In other words, it sank after you dropped your anchor? A. No.

Q. I am not sure just what the answer is now. The barge sank before your ship dropped the anchor, is that it? A. Yes.

Q. Have you ever made any tests on your ship to determine how long it takes your vessel to come to a full stop in the water after ringing full speed astern, starting with slow ahead?

A. I have never made a test.

Mr. Black: That is all. [611]

Redirect Examination

Q. By Mr. Adams: Mr. Yokota, based upon your experience aboard the "Sakito Maru", within what distance do you believe the "Sakito Maru" can be brought to a stop by putting the engines full astern from slow ahead?

A. About 300 meters at slow.

(Deposition of T. Yokota.)

Q. When you say at slow do you mean starting from slow ahead?

A. Yes; when it is running slow ahead and full astern.

Q. Mr. Yokota, about how far distant was the bow of the "Sakito Maru" from the place where the barge was at the time the "Sakito Maru" came to anchor? A. About 100 meters, I think.

Q. In other words, the "Sakito Maru" anchored about 100 meters away from the barge?

A. I think so; about that.

Mr. Adams: No further questions.

Recross-Examination

Q. By Mr. Eastham: How long did the barge remain afloat after the "Sakito Maru" struck her?

A. About two or three minutes.

Q. The "Sakito Maru" cut a hole in the barge, did she not? A. Yes.

Q. And the "Sakito Maru" was then backed away from the [612] "Olympic" immediately, was she not? A. Not right away.

Q. How long an interval elapsed between striking the barge and backing away from it?

A. It didn't back up very much.

Q. Why didn't you keep the "Sakito Maru" in the hole in the "Olympic"?

A. Because it separated right after that.

Q. You could have put the "Sakito Maru" back in the hole before the barge sank, couldn't you, and have kept her afloat?

(Deposition of T. Yokota.)

A. No. I think it is rather difficult once it separates.

Q. Did you form any estimate of the number of people that were on the barge at the time of the collision?

A. The ones that I saw, about two or three.

Q. I believe you have already testified that the "Sakito Maru's" boats did not rescue any of the survivors from the barge, have you not?

A. No; they did not rescue any.

Q. And you didn't recover any of the bodies of the persons that were drowned?

A. No; we did not.

Q. Did you see any of the people that were on the barge rescued by any other boats?

A. There was a motorboat on the other side of the [613] barge.

Q. Did you see that motorboat rescue any of the passengers on the barge?

A. It looked as though they were.

Q. How many did you see the motorboat rescue?

A. I could not see on account of the barge.

Q. Did you see any of the people that were on the barge drown? A. I did not.

Q. I believe you testified that the deck of the "Sakito Maru" was about 52 or 53 feet above water, is that right?

Mr. Adams: That was the bridge, Mr. Eastham.

A. Yes.

(Deposition of T. Yokota.)

Q. By Mr. Eastham: How far was the deck bow of the "Sakito Maru" above the barge at the time of the collision?

Mr. Adams: Do you mean the top of the bow? Do you mean in the forecastle head?

Mr. Eastham: Yes.

A. Do you mean the deck of the barge?

Q. How far was the bow deck of the forecastle head of the "Sakito Maru" above water?

A. About 30 feet, I think.

Q. How high was the "Olympic II" out of the water at that time, if you know?

A. I don't know. [614]

Q. You didn't form any estimate?

A. I did not.

Q. You could see clear over the "Olympic", could you not? A. Yes; I could.

Q. I believe you have already testified you didn't see any other barge anchored in that vicinity at that time? A. Not at that time.

Q. Well, did you at any time?

A. After we anchored; a little while after that.

Q. What did you see after you anchored?

A. I saw a barge similar to the "Olympic II".

Q. How far was she away?

A. I have no positive recollection.

Mr. Eastham: That is all.

Redirect Examination

Q. By Mr. Adams: Mr. Yokota, after the impact the bow of the "Sakito Maru" separated from the barge before the engines were put full astern,

(Deposition of T. Yokota.)

did it not? I will withdraw that question. After the impact the engines were stopped, were they not?

A. Yes.

Q. Before the engines were put full astern again, had the bow of the "Sakito Maru" separated from the barge?

A. Yes; at that time it had already separated. [615]

Q. What, in your opinion, might have happened if the engines had been put ahead instead of put astern at that time, not necessarily full ahead but put ahead?

A. I thought it would be dangerous.

Q. Why?

A. Because the "Olympic" was very small and our ship is very heavy and it was drawing a low draft and possibly, if we had done that, it might have turned the barge over and possibly we might have made another hole in some other spot.

Mr. Adams: No further questions.

Recross-Examination

Q. By Mr. Eastham: The barge turned over, didn't it? A. No.

Q. You say the barge did not turn over?

A. No; it did not.

Mr. Eastham: That is all.

Mr. Adams: Has anybody anything else to ask?

Q. By Mr. Cluff: Do you know at the time of the impact how far the force of the "Sakito Maru" drove the barge ahead of it?

(Deposition of T. Yokota.)

A. I don't know about that.

Q. Isn't it a fact that the force of the impact drove the barge sideways through the water about 100 feet or more? A. I don't think that much.

Q. How much do you think it did? [616]

A. I think 100 feet is too much.

Q. Well, how much do you think, how many feet? A. Between 50 and 100 feet.

Mr. Cluff: That is all. [617]

G. KATO,

a witness on behalf of Respondent-Claimant-Petitioner and Cross-libelant Nippon Yusen Kabushiki Kaisya, being first duly sworn, testified as follows:

Direct Examination

Q. By Mr. Adams: Mr. Kato, will you state your full name? A. Genkichi Kato.

Q. Mr. Kato, you are the chief engineer of the "Sakito Maru", are you not? A. Yes.

Q. And you were the chief engineer of that vessel on September 4, 1940? A. Yes.

Q. When did you join the "Sakito Maru" as chief engineer? A. In May, 1940.

Q. What training did you have for your position as engineer aboard vessels?

A. The Marine School in Tokyo.

Q. Is that the Tokyo Nautical School?

A. Yes; it is.

(Deposition of G. Kato.)

Q. Did you attend the engineering department of that school? A. Yes. [618]

Q. For how long? A. For five years.

Q. How long have you held a chief engineer's license? A. Since 1920.

Q. When did you graduate from that school?

A. The Taisho year 4; 1915.

Q. After your graduation in 1915, have you continuously served in the engine-room aboard vessels?

A. Yes.

Q. The "Sakito Maru" has two screws, has she not? A. Yes.

Q. And she is powered by two Mitsubishi Diesel engines? A. Yes.

Q. These engines are 2-cycle single acting?

A. Yes.

Q. And they have direct connection with the shaft? A. Yes.

Q. They each have seven cylinders?

A. Yes.

Q. What is the diameter of the cylinders? Do you recall? A. 720 millimeters.

Q. What is the stroke?

A. 1,250 millimeters.

Q. What is the type of fuel injection?

A. Solid induction. [619]

Q. Is that airless? A. Yes.

Q. What is the horse-power with full load capacity? A. One set is 4,800.

Q. Which set is 4,800?

A. Together they figure 9,600.

(Deposition of G. Kato.)

Q. As chief engineer, do you stand watches aboard the vessel? A. No; I have none.

Q. You were not standing any on September 4, 1940, were you?

A. Yes; I entered the morning watch.

Q. Were you standing watches during that day?

A. I go as I please at any hour for inspection.

Q. What time did you first go to the engine-room of the "Sakito Maru" on September 4, 1940?

A. 6:55 a. m.

Q. Did you remain in the engine-room from that time until after the collision? A. I did.

Q. What engineer was on watch at that time?

A. The first engineer.

Q. Who else was on watch at that time?

A. The third engineer and apprentice.

Q. Were there any oilers?

A. Three oilers. [620]

Q. Were you in the engine-room when stand by and slow ahead were rung on the ship's telegraph at 7:03? A. I was.

Q. What system do you follow aboard the "Sakito Maru" in the engine-room for making a record of the signals that you receive from the bridge on the ship's telegraph?

A. Will you repeat that question, please?

(Question read by reporter.)

A. We insert that in the signal book right away.

Q. Do you know who made the entry for the signal received at 7:03? A. I do.

(Deposition of G. Kato.)

Q. Who did ?

A. The third engineer by the name of Terashima.

Q. Did you see the telegraphs at the time that signal was received? A. I did.

Q. Did you note the time from the clock at that time yourself?

A. The clock is right in front of us and anybody, by looking at the clock, can tell.

Q. Where were you standing?

A. Right by the side in the engine-room.

Q. Is this the signal book that you mentioned?

A. Yes; it is.

Q. What page shows the entries made for September 4, [621] 1940? A. Right there.

Q. Is there an entry there showing the signal received at 7:03?

A. Yes; there is; stand by and slow.

Q. And that was the entry entered by the third engineer? A. Yes.

Q. What was done in the engine-room after that signal was received?

A. According to the order, we did what the order said.

Q. What did the order say?

A. Stand by and slow.

Q. Did you put the engine slow ahead?

A. Yes.

Q. Do you remember who operated the engines at that time?

A. The port engine was by the first engineer and

(Deposition of G. Kato.)

the starboard engine was by the third engineer, Terasima.

Q. Did anyone else come into the engine-room after the stand by and slow ahead was rung at 7:03?

A. Yes; there was.

Q. Who?

A. The two second engineers.

Q. When you say the two do you mean the senior second and the junior second? [622]

A. Yes; and the electrical engineer also came down.

Q. Did any more oilers come down?

A. Yes.

Q. Did all of these people, in addition to those that were on regular watch, remain in the engine-room up until the time of the collision?

A. Yes; they did.

Q. What was the next signal received from the bridge on the telegraphs after 7:03?

A. To stop and full astern.

Q. Were you in the engine-room at that time?

A. Yes.

Q. Did you hear the ship's telegraphs?

A. Yes; I did.

Q. Did you hear a jingle? A. Yes.

Q. Did you see the telegraphs yourself?

A. I did.

Q. Did you note yourself what time that signal was received? A. I did.

Q. Do you know who made the entry in the signal book of that signal?

(Deposition of G. Kato.)

A. A man by the name of Nakamura, the electrical engineer.

Q. What was done after that signal was received at 7:09? [623]

A. We immediately did according to what the signals signaled.

Q. Who made the reply to the bridge on the telegraphs? A. The oiler.

Q. Who operated the port engine?

A. At that time the first engineer.

Q. Who operated the starboard engine?

A. Terashima, the third engineer.

Q. What did each of them do in executing the order?

A. They grabbed hold of the handles immediately.

Q. Did they both execute the order promptly?

A. Yes; they did.

Q. What were the steps that each of them had to go through in order to execute the order?

A. They immediately set the engines from slow to full astern.

Q. And how did they do that?

A. You see, it is going ahead and then they have to, naturally, regulate that before they can do anything.

Q. What did they do to regulate it?

A. With compressed air.

Q. They stopped the forward direction of the propellers by compressed air, is that correct?

A. Yes; they did. And then they immediately made it full astern or changed it to full astern.

(Deposition of G. Kato.)

Q. Did they take any steps to increase the revolutions [624] when the engines were put full astern?

A. Yes; they did; they changed them.

Q. What did they do?

A. They put it to full

Q. Did they increase the revolutions from what they ordinarily would have provided for if there had not been a jingle on the telegraph?

A. Yes; they did.

Q. And how did they do that?

A. Because they heard the jingle for the third time and they thought there was something wrong.

Q. How did they do it? How did they increase the revolutions from what they ordinarily would have given?

A. They turned the engines over more than usual.

Q. By what process?

A. They increased the fuel oil supply.

Q. How long did it take after the signal was received in the engine-room to stop the engines and put them full astern before the engines were working in reverse and the propellers were turning in a reverse direction? A. About 10 seconds.

Q. About 10 seconds? A. Yes.

Q. What was the next signal received from the bridge after the stop and full astern signal at 7:09?

A. Stop. [625]

Q. What time was that received?

A. At 7:11.

Q. Who made the entry in the signal book for 7:11?

(Deposition of G. Kato.)

A. The man Nakamura, the electrical engineer.

Q. Was that signal promptly executed in the engine-room? A. Yes.

Q. Do you remember who operated the two engines?

A. The port was the first engineer and the starboard was the third engineer.

Q. And what was the next signal received from the bridge after the signal stop at 7:11?

A. After that?

Q. Yes; after 7:11. A. Astern.

Q. What time was that received?

A. At 7:13.

Q. Was that full astern? A. Yes.

Q. Who made that entry in the signal book?

A. The third engineer.

Q. The third engineer?

A. Yes; Terashima.

Q. Did you see the telegraphs at the time that signal was received? A. I did.

Q. Was that signal promptly executed on the engines? [626] A. Right away.

Q. Did the same men that you named, who executed the previous order, execute this order?

A. That was changed to Ishi, the second senior engineer. The other one was J. Hara, the junior second engineer.

Q. What was the next order received after 7:13?

A. At 7:14, stop.

Q. Was that order promptly executed?

A. Yes.

(Deposition of G. Kato.)

Q. And what was the next one after that?

A. Slow ahead.

Q. And what time was that received?

A. At 7:18.

Q. Was that order promptly executed?

A. Yes.

Q. And what was the one after that?

A. That was stop.

Q. Was that order promptly executed?

A. Yes.

Q. What was the time of that last stop order?

A. 7:19.

Q. After 7:19, there were no signals received from the bridge for some time, were there?

A. No; not for quite awhile after.

Q. Did the same person make all of the entries in the signal book from 7:13 on to and including 7:19? [627] A. Yes.

Q. And who was that person?

A. The third engineer, Terashima.

Q. As these signals were received from the bridge, the signals which you have just described, did you note as the signal was received the time that it was received? A. I did.

Q. Did you check the entries made in the signal book by the various parties that made those entries?

A. I did.

Q. Are those entries correct according to your recollection of the signals received and the times they were received? A. They are correct.

(Deposition of G. Kato.)

Mr. Adams: I have a photostatic copy of that particular page the witness has been referring to in the signal book and I would like to offer that for identification as Kato's Exhibit No. 1. And, if there is no objection, I will offer this in evidence.

Mr. Clough: Will you have the original book at the trial?

Mr. Adams: Yes.

Mr. Clough: Then, there are no objections as far as I am concerned.

9/23

water.	Half	<u>7 58.5</u>	Arrived @ Los Angeles
1083-220	8 ²⁹	1085380	1st Sept. 30.
D. Slow	8 ²⁵		
Stop	8 ²⁴		
1084-30		1085600	5/ ~ 03 D slow
D. Slow	8 ²⁵		Stop 7 ²⁸
Half	8 ¹¹		2370320 ast full 7 ⁰⁹ . 2373880
Slow	8 ²⁰		Stop 7 ¹¹
D. Slow	8 ^{23.5}		2370470 2374000
Half	8 ^{26.5}		ast full 7 ¹³
Gull	8 ²⁸		7 ¹⁵ Stop
Half	8 ³¹		Stop 7 ¹⁵ 2374030
Slow	8 ³²		
Gull	8 ³³		
Half	8 ³⁵		
Slow	8 ³⁶	2370610	
Half	8 ³⁹		Slow 7 ¹³
Slow	8 ⁴⁰		Stop 7 ¹⁵
Half	8 ⁴¹	2370690	2374120
Gull	8 ⁴⁵		
Slow	8 ⁵¹		
Stop	8 ^{54.5}		
15950			
Gull	<u>855.5</u>	1088170	

1088170
R/24. 8 58

Boat Drill at sea.
2nd Sept. 1940. AM.
7/10 10²².
7/10 10³⁰.

Slow	11 58.5	
	12 00.	Slow
2370810.		2374170.
Stop	12 33	
	12 33.5	Stop
2372440		2375830
ast Half	12 42.5	
	12 42.5	ast Half
Stop	12 44.5	Stop
2372550		2375880
	12 50	
ast Half	12 51	Half

(Deposition of G. Kato.)

(Discussion off the record.)

Q. By Mr. Adams: I refer you to the engineer-room log [628] book. Have you turned to the page showing the entries for September 4, 1940 in that log book? A. Yes.

Q. Is this the smooth log that you have before you? A. Yes; it is.

Q. Does the smooth log also contain the same entries that you have just referred to in the signal book?

A. No; it is not the same. The second engineer has charge of this and then he figures it out in the smooth log book as to the revolutions.

Q. Does he put down in the smooth log book the entries as they appear in the signal book?

A. Yes.

Q. Have you examined this page of the smooth log book? A. Yes; I did.

Q. From your knowledge of the events that transpired, are the entries made on that page correct?

A. They are correct.

Mr. Adams: I have a photostatic copy of that page and, if there is no objection, I will offer that photostatic copy in evidence as Kato's Exhibit No. 2.

Date	Time	Position	Distance from Last Report	Engines Running	TEMPERATURE												FREQUENCY												GEOGRAPHY																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																				
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(Deposition of G. Kato.)

Q. When the engines are set at full ahead, what are the regular revolutions turned?

A. It is usually at 118.

Q. When the engines are set at full ahead on reduced revolutions, what are the revolutions turned? [629]

A. Will you read that question again, please?

(Question read by reporter.)

Q. I will withdraw the question. Do you have a stand by full ahead signal? A. Yes.

Q. When you are operating full ahead stand by, do you operate upon reduced revolutions?

A. That is harbor full ahead.

Q. And what are the revolutions that you operate on when you have the engines full ahead stand by? A. 70.

Q. What is your engine speed with the revolutions at 118? A. It depends on the slip.

Q. Without figuring the slip, what do you estimate the engine speed to be?

A. At 118?

Q. Yes. A. 16 miles.

Q. Sea miles or nautical miles?

A. Yes; nautical miles.

Q. When the engines are full ahead stand by and the revolutions are 70, what is your engine speed, without figuring the slip?

A. About $10\frac{1}{2}$ miles, I think, with no slip.

Q. When the engines are slow ahead, what revolutions [630] are turned. A. 50.

(Deposition of G. Kato.)

Q. What is the engine speed without figuring the slip? A. 7½ miles, I think.

Q. Does the actual speed of the vessel vary from the engine speed that you have just given?

A. Yes; it does.

Q. Is the actual speed less than the engine speed which you have just given? A. Yes; it is.

Q. Why? A. Because there is a slip.

Q. What factors occasion the slip?

A. The wind and the draft of the ship and the dirt on the outside of the ship and the tide. On account of that, it changes quite often.

Q. What is the pitch of your propellers?

A. 4.6 meters.

Q. Can you estimate what the slip was at the time of the collision and just immediately prior, taking into consideration the factors that you say influence the slip? A. No; I cannot.

Q. What was the average slip, as shown in the log book, for September 4, 1940?

A. 9.7 per cent.

Q. Over what period of time was that average computed? [631]

A. From noon of the day ahead until the arrival.

Q. Do you mean from noon, September 3rd, until the arrival at Los Angeles Harbor on September 4th?

A. Yes.

Q. If the engines are at full ahead, as they were prior to 7:03 a. m. on September 4, 1940, and the engines are then set at slow ahead and the revolutions

(Deposition of G. Kato.)

reduced to 50, about how long do you think it would require before the revolutions are decelerated to 50?

A. It wouldn't take three minutes at that time. That is only rough.

Q. Do you believe that that was true in connection with the lowering of the speed of the vessel at 7:03, on September 4, 1940, from full ahead to slow ahead?

A. Will you repeat that question?

(Question read by reporter.)

A. What do you mean by that?

Q. Prior to 7:03, the engines were full ahead, were they, on September 4, 1940? A. Yes.

Q. The engines were then, as 7:03, put at slow ahead?

A. Yes; it was put to slow ahead at 7:03.

Q. How long did it take for the revolutions to be reduced to 50 when that slow ahead order was executed?

A. It didn't take up to three minutes. That is a rough estimate. [632]

Q. Did you feel the shock of the collision in the engine-room? A. Just slightly.

Q. Just a slight shock?

A. I didn't know whether it was a collision or not. I heard about it afterwards and then I figured it was about that time.

Q. What is the diameter of your propellers?

A. 4.4 meters.

(Short recess.)

(Deposition of G. Kato.)

Q. When the engines are full ahead and the revolutions being turned are 118, what is the engine speed, without figuring the slip? A. About 17-3/4.

Q. You previously testified, I think, that the engine speed under those circumstances was 16. Do you wish to correct that testimony?

A. Do you mean engine speed?

Q. Yes.

A. Yes; I made a mistake. At eight per cent, it figures out about 16.

Q. Eight per cent of what?

A. That is the slip, eight per cent.

Q. It figures out to what?

A. That figures out 16.2.

Q. That is figuring the slip? [633]

A. Yes; the eight per cent slip.

Q. What does it figure out with the slip at 10 per cent? A. 15.8.

Mr. Adams: You may cross-examine.

Cross-Examination

Q. By Mr. Cluff: Chief, do you have somewhere, either in your engine-room log or your bell book, the tachometer readings periodically during the period before the collision?

A. No; it is not in this book. I have the one at 4 a. m.

Q. You have a tachometer reading at 4 a. m.?

A. Yes.

Q. Is that the last tachometer reading you have in the record here?

A. Before the stand-by signal?

(Deposition of G. Kato.)

Q. Yes.

A. Yes; this is the last one.

Q. That is at 4 a. m.? A. Yes; 4 a. m.

Q. You have tachometer readings on the port and starboard engines at 4 a m.?

A. Yes; we have two tachometers. We have one of the revolutions at the time of the watch and we have one on the indication of the revolutions, the same as a speedometer on an automobile.

Q. Of the records that you have in the log book, which [634] tachometers are those entries of?

A. This is a reading from the tachometer.

Q. You say that is a reading at 4 a. m.?

A. Yes.

Q. What do you have on the port engine at 4 a. m.?

A. 117.6. That is the average of one watch.

Q. And that is the average of the revolutions for the preceding four hours, is it?

A. The clock was put back at that time, or before that, 15 minutes, at 2 o'clock.

Q. So the actual period covered by that average of 117.6 is three hours and 45 minutes elapsed time?

A. Yes; it will figure out that way.

Q. Is it three hours and 45 minutes or four hours and 15 minutes?

A. No; it is not that because it was put back 15 minutes. Then it will figure out four hours and 15 minutes.

Q. Did you get the same average on the starboard engine? A. 117.8.

(Deposition of G. Kato.)

Q. On the starboard it is 117.8?

A. Yes.

Q. And that is for the same period?

A. Yes; it starts at the same hour and stops at the same hour.

Q. Do you have an indicator there showing the actual [635] number of revolutions progressively on each engine? A. Yes.

Q. Do you have a record of the entries of the actual revolutions shown on each engine for the period of a couple of watches prior to the collision?

A. There is one entry here of the watch before that.

Q. What is the closest entry you have to 9 o'clock on September 3rd, that is, at 9:52 a. m.?

A. Yes; I have one here; I have one entry here of 4 a. m. of September 3rd.

Q. 4 a. m., September 3rd?

A. Yes; and the first one also is at 4 a. m. of the next day.

Q. As to 4 a. m., September 3rd, will you give me the readings of the port and starboard engines?

A. The port engine is 118.1 and the starboard engine is 118.3.

Q. I don't think you understand me fully.

(Discussion off the record.)

A. I have one at 8 o'clock.

Q. On what day? A. September 3rd.

Q. Let's take it at 8 o'clock a. m., September 3rd.

A. Port engine, 118.3; starboard engine, 118.3.

(Deposition of G. Kato.)

Q. No. I want to get the number of actual revolutions as shown by the revolution counter at that time. It will be [636] a figure in the millions.

A. 2,205,370 for the port engine; starboard engine, 2,208,890.

Mr. Adams: What is the time of that?

Q. By Mr. Cluff: That is at 8 o'clock on the 3rd of September? A. Yes.

Q. What is the next entry you have of those same figures?

A. I have the next one at noon of the same day.

Q. Will you give me those for both port and starboard?

A. Port engine, 2,233,650; starboard engine, 2,237,210.

Q. Do you have another one at 4 o'clock p. m.?

A. Yes; I have.

Q. Will you give us the port and starboard?

A. Port engine, 2,261,850; starboard engine, 2,265,480.

Q. Now, the 8 p. m. readings?

A. Port engine, 2,290,030; starboard, 2,293,640.

Q. Now, the midnight reading?

A. Port, 2,318,240; starboard, 2,321,850.

Q. And do you have one now for 4 a. m. on September 4th?

A. Yes; port engine, 2,348,240; starboard, 2,351,880.

Q. Do you have a reading anywhere, a similar reading, of the revolution counters when you have got the stand by at 7:03? A. I have not. [637]

(Deposition of G. Kato.)

Q. Then the next reading you have is what time?

A. When we received the full astern signal, the port engine was—

Q. Just a minute. That is full astern at what time? A. 7:09.

Q. All right. Will you give us the readings there?

A. Port engine, 2,370,320; starboard engine, 2,373.880.

Q. Those are all the readings of that kind that you have prior to the actual collision, is that right?

A. Yes.

Q. Chief, will you describe the process step by step by which the engines of the type of the "Sakito Maru" are stopped and reversed, as, for instance, when you get a bell from slow ahead to full astern? Will you just tell for the record here what the engineer does step by step? What is the first thing he does when he starts to manipulate the engines?

A. You answer immediately.

Q. You answer the telegraph? A. Yes.

Q. Then the next step, when they start to manipulate the engines themselves, is to shut off the fuel, is it not? A. It depends on the engine.

Q. I mean on an engine such as you have on this ship.

A. What are you referring to now?

Q. When you start to stop an engine, going ahead now, [638] and you want to stop, you shut off the fuel?

A. At the time we get the stop engine, we shut off the fuel.

(Deposition of G. Kato.)

Q. That is, just like letting your foot off of a throttle of an automobile.

A. I don't know anything about an automobile, but I think it is about the same.

Q. When the fuel is cut off, that stops the power and the engines start right away to slow down, is that right?

A. When you cut off the fuel, the engine, naturally, stops.

Q. To put it in reverse then, that is, to make the propeller go into reverse, you have to stop the shaft entirely, do you not? A. Yes.

Q. And that you do by means of an air brake?

A. We have an air brake but it is a different process.

Q. Will you describe the process by which it works?

A. If one engine stops, they have some sort of a brake that stops the revolution of that engine.

Q. After the power is cut off and after the fuel is shut off, then you apply the brake to stop the shaft from turning ahead?

A. Yes. But it is not that brake. There is another brake. It is manipulated with compressed air.

Q. Does that air brake operate by friction on the [639] shaft? A. No.

Q. How does it work? How does the brake function?

A. It is stopped with the strength of the compressed air in the opposite direction.

Q. That is against the pistons in the cylinders, is it? A. What do you mean?

(Deposition of G. Kato.)

Q. Where does the compression work to stop the shaft? A. We have that separately.

Q. But where does it work? Where does it function? Where does it apply to the engine to stop it?

A. The piston goes up and down and then the compressed air is applied to that piston and it is shoved down with this compressed air.

Q. That is, the air applies against the stroke of the piston?

A. Anyway, it is done in the opposite direction from the way the piston is working.

Q. And then that brings the shaft to a complete stop, does it?

A. No; not immediately because there has been a speed on that shaft.

Q. But, when the compressed air is applied, it will gradually bring the shaft to a complete stop?

A. Yes.

Q. And, until it comes to a complete stop, of course, [640] it can't be put into reverse?

A. Yes.

Q. So then, after the shaft comes to a complete stop, what is the next step toward putting the engine in reverse?

A. We take the handle of the cam and put it into reverse as far as we can and then we apply the fuel as hard as we can.

Q. And that makes the engine run in reverse then? A. Yes.

Q. So am I right now in saying that the engineer has to go through these four steps to change from ahead to reverse, first he shut off the fuel?

(Deposition of G. Kato.)

A. Yes.

Q. Next, he applies the air to stop the shafts from turning ahead?

A. No. Then we go ahead a little bit and then immediately apply the compressed air.

Q. That is, let a little interval of time elapse and then apply the compressed air?

A. We reverse it first and then we wait. We apply the compressed air to the shaft and bring it to reverse and then we apply the fuel oil as hard as we can.

Q. Then you throw over the lever to reverse the cam?

A. The cam operation is done first.

Q. That is done first before the brake, is it not?

A. Yes. [641]

Q. And then, when the engine comes to a stop, you pour the fuel in and it runs in reverse?

A. Yes.

Q. How many different handles does the engineer have to manipulate to accomplish those maneuvers?

A. Two.

Q. Two handles? A. Yes.

Q. That is, the fuel?

A. No; the reversing handle and the starting handle.

Q. How about the brake?

A. The brake is attached to the starting handle.

Q. It is a part of the same manipulation?

A. Yes.

(Deposition of G. Kato.)

Q. How long a time does it take for the engineer to go through those maneuvers.

A. It depends on the speed of the engine.

Q. Say the engine is going slow ahead to begin with, say about 50 revolutions, and then you want to get it into reverse, with all of the revolutions you can get. How long would that take?

A. Do you mean when it is open full?

Q. Yes.

A. I cannot tell you how long that would take.

Q. Would it be as much as a minute?

A. No; I think it would take more than that. I have no [642] record of that so I can't tell you.

Q. But it would take something more than a minute anyway, wouldn't it?

A. I think it might be accomplished in one minute.

Q. Each engineer has to perform those same functions with both the port and the starboard engine?

A. Yes.

Q. Can you estimate how many revolutions the engines of the "Sakito Maru" attained in reverse after the first full astern and before the first stop bell? A. What time was that?

Q. That is at 7:09 to 7:11.

A. I cannot give you anything definite on that.

Q. Would you say they got as much as 50 revolutions in reverse? A. Do you mean here?

Q. I mean full astern at 7:09 and then stop at 7:11. Until you got that stop bell, up to the time that

(Deposition of G. Kato.)

the stop bell came at 7:11, do you think the engines got going as much as 50 revolutions a minute in reverse?

A. No. There were a number of bells sounded at that time and I think it must have gone about 100. I cannot give you anything positive but I think it went up to about that.

Q. That is just before 7:11? A. Yes. [643]

Q. And that is turning in reverse up to almost 100 revolutions? A. I think so.

Q. Do you mean by that an average speed of 100 revolutions per minute or that they turned 100 times?

A. No. The speed gradually increases. It gradually increases from stop and by the time it gets to 7:11 it would attain that amount.

Q. That is, an average of 100 revolutions a minute?

A. I don't mean altogether, but at this time of 7:11. I think that about that time it was turning at about 100.

Q. 100 a minute?

A. That is the average. That is indicated on the indicator or the tachometer.

Q. Here is what I am trying to get at. Do you mean by 100 the rate of speed or the actual turns of the engine?

A. That is prorated at 100 at this time, at 7:11. I prorated that at that time because the indicator shows that. I think it was around about 100.

Q. Chief, the bell book here shows a notation at

(Deposition of G. Kato.)

7:11 on the port engine of 2,370,470. Now, is that the reading of the revolution counter when you got the stop bell at 7:11? A. Yes; it is.

Q. And the one at 7:09, which is 2,370,320, was the actual reading of the counter when the full astern bell came? [644] A. Yes.

Q. Would the difference between those two figures represent the actual number of revolutions which the port engine turned astern between 7:09 and 7:11?

A. Yes.

Q. 150 revolutions about? A. Yes.

Q. All right; I understand. Was that reading of the revolution counter at 7:09 taken after the engine had completely stopped from going ahead?

A. No. It changes from the time that it starts to stop up to this point. It passes the stop signal but then from stop to full astern it gradually decreases.

Q. So that difference between 320 and 470 would represent some revolutions ahead as it was slowing and all revolutions astern?

A. No; it doesn't figure out that way.

Q. Does the revolution counter indicate the number of revolutions that the engines make in reverse as well as the number of revolutions ahead?

A. Yes; it is the same.

Q. Chief, will you look at this Kato's Exhibit No. 1, the bell book, and note the entries from the revolution counter at 7:09 and 7:11? The difference is 150, is it not? A. Yes.

Q. 150 revolutions on the port engine? [645]

A. Yes.

(Deposition of G. Kato.)

Q. That means that during that two-minutes' time the engine had made 150 revolutions?

A. Yes.

Q. That is right, isn't it?

A. That is correct.

Q. Now, can you say whether all those 150 revolutions were made astern or were part of them ahead and part of them astern?

A. They were astern.

Q. All astern?

A. Yes. This is astern and the other one is stop. So they must be all astern.

Q. Do you know who took those revolution counter readings that are set down in the bell book there, Kato's Exhibit No. 1?

A. I am not positive but I think it might have been an oiler.

Q. Do you know in whose handwriting they are entered there? A. No; I do not know.

Q. Would whoever was taking the revolutions wait until the engines stopped from going ahead before he put down that entry ending in "320"? Would he wait before he took that reading until the engine had completely stopped.

A. Yes; I think he would wait. [646]

Q. And we could use the same reasoning on the starboard engine, and the starboard engine made during that time 120 revolutions?

A. Yes; that is so.

Q. And those would all be made in reverse, too?

(Deposition of G. Kato.)

A. Yes. The engines are operated by two different persons. Therefore, they do not stop or act at the same time.

Q. That is, it depends on the reaction of the engineer and one is a little ahead of the other?

A. No. It depends upon the time; not the person.

Mr. Cluff: I have no further questions.

Mr. Black: I haven't any questions.

Mr. Montgomery: I have none.

Mr. Clough: I have no questions.

Mr. Eastham: I don't believe I need to ask any.

Redirect Examination

Q. By Mr. Adams: Mr. Kato, these readings that Mr. Cluff has referred to in the signal book show, do they not, between 7:09, when the engines were put full astern, and 7:11, when the engines were stopped, that 150 revolutions were turned on the port engine, with the propellers in reverse direction?

A. Surely.

Q. In other words, the port engine during those two [647] minutes turned 150 revolutions in reverse?

A. Yes.

Q. And that is an average of 75 revolutions per minute, is it not? A. Yes.

Q. And, as I understand your testimony, during the second minute the revolutions were faster than during the first minute? Or let me put it this way, Mr. Kato. Is it possible that during the first minute, between 7:09 and 7:10, the engines turned in reverse direction 35 revolutions and during the second min-

(Deposition of G. Kato.)

ute turned in reverse direction 150 revolutions? Is that possible?

A. It is not possible. We heard the signals three times.

Q. Mr. Kato, there was a gradual increase from 7:09, from the first revolution in the reverse direction, up to 150 at 7:11, when the engines were stopped, is that correct? A. That is correct.

Q. And is that also true with respect to the starboard engine except that the total revolutions for those two minutes were 120, is that right?

A. Yes; that is right.

Q. What did you mean when you testified in answer to my question that it required about 10 seconds to put the propellers in reverse motion when the engines were changed from slow ahead to full astern at 7:09? [648]

A. Before we got the signal to stop, the engine was going slow and then from stop it went to full astern.

Q. How long did it take to put the propellers in reverse direction from slow ahead to full astern in execution of the full astern order? I will withdraw that question. In executing the full astern order at 7:09, how long did it take from the time you first executed that order or started to execute it to put the propellers in reverse direction?

A. About 10 seconds.

Mr. Adams: No further questions.

(Deposition of G. Kato.)

Recross-Examination

Q. By Mr. Eastham: I would like to know how long it would take from the time the signal of full speed astern was received until the ship responded.

Mr. Adams: I object to the question as unintelligible with respect to the portion of it that refers to when the ship responded. I don't know what is meant by that.

Mr. Eastham: When the ship gained sternway as opposed to headway.

Mr. Adams: Then, I object to the question upon the obvious ground that the engineer, being in the engine-room, was in no position to determine when the ship gained sternway. If you wish to ask him what his general experience is, I have no objection but as to this particular question I object upon that ground. [649]

Mr. Eastham: If he can't answer the question, it is all right with me but I think it is more important to know what the ship did than what the engines were doing.

Mr. Adams: Do you wish to pursue that inquiry further?

Mr. Eastham: If the witness doesn't want to answer, it is all right with me.

Mr. Adams: I simply offered an objection to the question. If you wish to pursue it, you may do so or reframe it.

Q. By Mr. Eastham: Do you understand the question, Mr. Kato?

(Deposition of G. Kato.)

A. Will you repeat that question, please?

(Question read by reporter.)

A. I can't see that. I am down in the engine-room.

Q. You can't tell from being in the boat when she is going astern, is that right? A. No.

Q. As a matter of fact, the ship never did stop when she struck the barge, isn't that right?

Mr. Adams: I object to the question upon the obvious ground that the witness was in the engine-room and was in no position to see.

Mr. Eastham: O. K.

Mr. Adams: Is there anything further from this witness?

Mr. Clough: That is all. [650]

SO SHIMADA,

a witness on behalf of Respondent-Claimant-Petitioner and Cross-libelant Nippon Yusen Kabushiki Kaisya, being first duly sworn, testified as follows:

Direct Examination

Q. By Mr. Adams: What is your full name?

A. So Shimada.

Q. How do you spell your last name?

A. S-h-i-m-a-d-a.

Q. Mr. Shimada, you are an A. B. sailor aboard the "Sakito Maru" now? A. Yes.

Q. You were also an A. B. sailor on September 4th, the day of the collision? A. Yes.

(Deposition of So Shimada.)

Q. How long have you been to sea?

A. Three years.

Q. When did you join the "Sakito Maru"?

A. Showa year 13; 1939.

Q. When did you turn to work on the morning of September 4, 1940? A. 6:30 a.m.

Q. What did you do when you first went to work that morning?

A. I was wiping and cleaning. [651]

Q. Where?

A. On the house on the upper deck.

Q. After you commenced work, did you hear the fog signals of the "Sakito Maru" start sounding?

A. Yes; I did.

Q. What did you do when you first heard the fog signals of the "Sakito Maru"?

A. I went to the forecastle.

Q. Did you immediately go to the forecastle?

A. Yes.

Q. What did you do when you got to the forecastle head? A. I acted as lookout.

Q. Where did you stand?

A. Right in the bow.

Q. I show you a photograph which is Yokota's Exhibit No. 6. Does that show where you stood?

A. Yes; it does. It is right there.

Mr. Adams: Let the record show the witness pointed out the platform shown in that photograph.

Q. What did you do when you got on that platform? A. I acted as lookout.

(Deposition of So Shimada.)

Q. What did you do in acting as lookout?

A. I looked around forward and on both sides.

Q. Did you continue to do that up until the time you sighted the barge?

A. Yes; I looked on both sides and ahead of me. [652]

Q. Did you see the barge "Olympic II" while you were standing there as lookout?

A. You mean did I see it?

Q. Yes. A. Yes; I did.

Q. About how long had you been out there standing lookout before you saw the barge?

A. I cannot give you anything definite on that.

Q. What is your best recollection?

A. About five minutes.

Q. Before you saw the barge, did you hear any signals? A. I don't understand you.

Q. Before you saw the barge, did you hear any whistles from other vessels or any bells from other vessels?

A. No; I didn't hear any.

Q. Where was the barge when you first saw it?

A. Ahead of the ship.

Q. Straight ahead?

A. Yes; straight ahead.

Q. Was it lying at right angles to the course of the "Sakito Maru"?

A. I don't understand about right angles. (Discussion between the witness and the interpreter in Japanese.) I don't know whether it was at right angles or not. I was looking right straight ahead

(Deposition of So Shimada.)

of me. I couldn't look at the stern at the same time. [653]

Q. What did you do when you first saw the barge? A. I reported to the bridge.

Q. How?

A. I reported that I saw a vessel ahead of us.

Q. How did you report it?

A. With a megaphone.

Q. I show you a photograph marked Yokota's Exhibit No. 6. Does that photograph show the megaphone you used?

A. That is the megaphone there.

Mr. Adams: Let the record show the witness is pointing out the megaphone shown in the photograph.

Mr. Montgomery: Mr. Reporter, does the record show that the witness did not understand the meaning of the term "right angles"?

(Record read by reporter.)

Q. By Mr. Adams: Mr. Shimada, when you said you couldn't look at the stern at the same time, do you mean you couldn't look at the stern of your vessel?

A. Yes; our ship, the "Sakito Maru".

Q. Was the barge at right angles to you as you stood at the bow of the "Sakito Maru"?

A. Anyway, I don't know the position of the barge. I saw this vessel from the bow of my ship, where I was standing.

Mr. Cluff: The witness has just placed the po-

(Deposition of So Shimada.)

sition of the ships, with the models I produced, at right angles, with the model representing the "Sakito Maru" pointed [654] approximately amidships of the model representing the barge. And will the interpreter please ask the witness if the way he has just placed the models is the way the barge appeared to him at that moment he first sighted it?

A. I know that the side of the vessel was showing but whether it was at right angles or whether it was a little to one side or the other I can't tell.

Q. By Mr. Adams: After you sighted the barge, do I understand you immediately yelled through the megaphone to the bridge? A. Yes.

Q. What did you yell?

A. "I see a vessel ahead."

Q. What did you do after you did that?

A. I was standing there and watching it for awhile.

Q. Did you continue to stand on the platform?

A. Until the collision?

Q. Yes.

A. Before it hit, I got down from the forecastle.

Q. You got down from the platform?

A. Yes; I got down from the platform and went to the lower deck.

Q. You got off the forecastle head?

A. Yes.

Q. While you were standing on the platform, after you gave the warning, did you notice whether the "Sakito Maru" [655] seemed to change her heading? A. That I don't know.

(Deposition of So Shimada.)

Q. How far away do you think the barge was from the bow of the "Sakito Maru" when you first saw her?

Mr. Montgomery: I would like to object to that as no proper foundation has been laid to show that this witness could estimate any distance or make any other estimates.

A. I don't know.

Q. By Mr. Adams: Did you see any people on the barge at any time? A. I did.

Q. Where were you standing when you saw people on the barge?

A. I was standing as a lookout.

Q. What were the people doing?

A. Do you mean after the collision?

Q. No; after you first saw the barge.

A. Yes; I did see them.

Q. What were they doing?

A. They were fishing.

Q. This was before the collision, was it?

A. Yes.

Q. Were you standing on the platform at the bow at that time? A. Yes.

Q. After you got off the platform and the forecastle [656] head and went down on the deck, did you again look at the barge?

A. Yes; I looked over from the port side.

Q. At that time did you see people on the barge?

A. I did.

Q. Did you see what those people were doing?

A. They were reeling up the lines.

(Deposition of So Shimada.)

Q. After you first saw the barge, did you hear any signal from the barge?

A. After I was able to see the people there, I heard it.

Q. What did you hear? A. A bell.

Q. Did you hear a continuous ring on the bell or separate peals of the bell?

A. Continuous.

Q. After you left the forecastle head and went down on the deck and looked over the port side and saw the barge, what did you do after that time?

A. I went for the preparation of the lifeboat?

Q. Did you get into the lifeboat?

A. Yes; I did.

Q. Were you a member of the lifeboat crew that searched the waters for survivors or bodies?

A. Yes; I was.

Q. Did you see any people or any bodies in the water? A. I didn't see any. [657]

Q. While you were standing on the platform looking out, prior to the time you saw the barge, did you have any other duties besides just standing as lookout? A. I was just acting as lookout.

Mr. Adams: No further questions.

Cross-Examination

Q. By Mr. Cluff: How many minutes were there between the time you first saw the barge ahead and the collision? A. I don't know.

(Deposition of So Shimada.)

Q. Was it as much as five minutes?

A. I don't know.

Q. About how far ahead, how many meters ahead, was the barge when you first saw it?

A. I don't know.

Q. Do you know how many ship lengths of the "Sakito Maru" or how many times the length of the "Sakito Maru"?

A. I don't know.

Q. Do you think it was as much as four or five ship lengths of the "Sakito Maru"?

Mr. Adams: That is objected to as having already been asked and answered.

Mr. Cluff: We will press for an answer.

A. I don't know how many lengths.

Q. Did you see any other ships besides this one barge that the "Sakito Maru" ran into? [658]

A. I saw a motorboat.

Q. Where was the motorboat?

A. After the collision, I saw the motorboat on the other side of the barge.

Q. Did you see any other barges like the one that was sunk? A. I didn't see any.

Q. How old are you? A. 19.

Q. 19 now? A. Japanese 19.

The Interpreter: That is one year ahead of ours. When they are born, they are one year old.

Q. By Mr. Cluff: Then, according to American calculations, you would be 17 in September, 1940?

A. I don't know how they figure the ages in this country.

(Deposition of So Shimada.)

Q. When was your birthday Japanese style?

A. March 10th, Taisho 12, 1923.

Q. Then you were born March 10, 1923?

A. Yes.

Mr. Cluff: I don't have any further questions.

Q. By Mr. Black: How tall are you?

A. Five feet two and one-half.

Q. How high is the top of the rail above the platform where you stand? [659]

A. Where do you mean?

Q. At the top of the rail above the platform where you stand.

A. Do you mean the top right there, the bulwark?

Q. Yes; the bulwark.

A. It comes to about there.

Mr. Cluff: Indicating about the height of the navel? A. Yes.

Q. By Mr. Black: How long have you been going to sea? A. Not quite three years.

Q. Has that been continuous service at sea?

A. Yes.

Q. And that is a little less than three years up to the present time?

A. It won't be quite three years.

Q. Up to the present date? A. Yes.

Q. So it would be a little over two years at the time of the collision? A. Yes.

Q. Did you hear your own vessel blow three short blasts before the collision?

A. I don't know.

(Deposition of So Shimada.)

Q. Did you hear any fog signals from your own vessel, after the first one you heard, when you went up on the forecastle head? [660]

A. Yes; I did.

Q. How many did you hear?

A. I don't know the number.

Q. Do you wear glasses to read by?

A. No; I don't.

Mr. Black: That is all.

Mr. Adams: Are there any further questions by other counsel?

Mr. Eastham: I don't care to ask any.

Mr. Clough: I don't think so.

Mr. Adams: That is all.

Mr. Cluff: Mr. Adams, before we close this session, I would like to ask if the two witnesses, the lookout and the first officer, will, when the ship returns, be willing to submit themselves to very brief vision tests by a technician, about the same test they give an automobile driver under the California law.

Mr. Adams: Personally, I don't see any objection to that procedure but, after all, that involves something personal with each of the witnesses and I have no control over their actions.

Mr. Cluff: Will you undertake to ascertain and advise us before the ship returns if they will submit to such tests? We offer to have the tests made by a qualified optometrist, without expense to the witnesses or the other side.

Mr. Adams: I would like to ask if you will ex-

tend the [661] same privilege to me to have Mr. Ohiser tested.

Mr. Cluff: Yes; I will be glad to if he is available.

Mr. Adams: I will be glad to endeavor to arrange for these witnesses to submit themselves to such a test if I have a like opportunity to have Mr. Ohiser's eyes examined without his glasses, which I understand he was not wearing at the time of the collision.

Mr. Cluff: Yes; there is no objection to that if we can catch him. I don't know where he is now. I heard he was sailing on a voyage but I also heard somewhere that he was back.

Mr. Adams: I don't know whether these witnesses will continue to remain aboard the "Sakito Maru" but I will take it up with them and see if they will be willing to do that when the ship next returns to Los Angeles.

Mr. Cluff: She is expected back some time in August?

Mr. Adams: As far as I know, unless she is taken off the run for some reason I don't anticipate, or unless they are transferred to some other job.

Mr. Cluff: Will you within a reasonable time of her arrival let us know if they are available and if they will submit to the tests and we will arrange to have a convenient time and place for the tests to be taken?

Mr. Adams: I will endeavor to do so.

Mr. Eastham: Mr. Adams, do I understand you are going to take the deposition of the former master, that is, the [662] master of the "Sakito Maru" on September 4, 1940?

Mr. Adams: Not necessarily. I hope to have the master present at the trial but, if he is not present at the trial, we certainly intend to obtain his testimony by deposition if we can. And, in addition to that, we intend to obtain the testimony by deposition of all other witnesses aboard the "Sakito Maru" who know any material thing concerning the circumstances of the collision.

Mr. Eastham: I was just wondering if you had any idea about the time you might have him here.

Mr. Adams: I think probably we will have him present for the trial.

Mr. Montgomery: Mr. Adams, if you do have any further depositions, we would appreciate a little more notice than we had of these depositions.

(Discussion off the record.)

[Endorsed]: Filed Sep. 18, 1941. [663]

Mr. Cluff: No objection to the offer. May it be stipulated that, prior to the submission or subsequent to the submission of the case here, and during the time provided for arguments or authorities, that any specific objections which any counsel have may be noted in writing and given to the Court?

The Court: I haven't any objection to that practice. I don't know, gentlemen, just where you are headed, what you gentlemen have in mind.

Mr. Adams: The inspectors will bring the captain down in a very few minutes.

The Court: But I have in mind that the Court is going to be in considerable darkness here, and probably the visibility [663a] will be far worse than it was on that morning, on this question of some expert testimony from somebody who knows something about these bulkheads. For instance, you take the bulkheads on the "Olympic II", how is the Court going to determine that the failure to have those bulkheads contributed in any way to the deaths of these people? That question came up this morning.

And then, here is another question that I am interested in: The testimony of the officers, the engineers in charge of the "Sakito Maru", shows that she came definitely on 340 degrees true. They have the graph that shows her movements. The testimony on one side tends to show that she changed her course. Now, I don't know. It seems to me that, with the mechanical device that way, once they can show that those devices are accurate, or allow leeway, that the Court is going to accept that chart.

Mr. Cluff: But the graph does show she changed her course. She changed her course 10 degrees to starboard.

Mr. Adams: It shows she changed her course 10 degrees to starboard just about one minute prior to

the impact. That will be our testimony, if the Court please.

The Court: And then another thing that I will want more definite information on is the size of that hole in the "Olympic". That is going to be important so far as the bulkheads are concerned. In other words, it is rather indefinite. Some say it was cut through about half way through, and some say [664] more than half way through. How much of a hole did that make in the side of the "Olympic"? And there should be some testimony here from those who can tell from the bow of the "Sakito Maru" as to the extent that the "Sakito Maru" extended into the "Olympic"; and that would also give the depth, and then that would also give the breadth of the gash.

Mr. Cluff: We shall have evidence on that point, very definite evidence.

Mr. Adams: I have drawings in my hand now covering that feature.

Mr. Cluff: We might get together on a stipulation on that. Who did you have for surveyors?

Mr. Adams: These are drawing by either the captain or one of the officers aboard the "Sakito".

Mr. Cluff: We had before my time Mr. Alderson, former Lloyd's surveyor, who made the survey.

The Court: Is your witness present now?

Mr. Adams: Yes, if the Court please.

The Court: You may proceed. [665]

Mr. Adams: Now let me see if we have an interpreter here.

I might state with reference to the court's comments about the bulkhead, if these orders and specifications were lawful, there is an admitted non-compliance with them. That constitutes the statutory fault. The burden would be upon Hermosa to prove that it had no contribution, did not contribute in any respect to the collision or losses which occurred.

The Court: I don't know whose burden it is, but the court is groping for that information so that it can pass upon these questions, as far as the court is concerned, with some degree of satisfaction.

Mr. Adams: I might state that we will carry what burden we conceive to be ours in that respect.

Mr. Cluff: The court cannot tell, neither can we, that is, we can't defend a case until we are attacked. I take issue with counsel's statement about a rule of the inspectors.

The Court: Very well.

Mr. Adams: The United States Supreme Court now has decisions on that point.

Mr. Cluff: We will argue that when we get around to it, but we will have testimony on that point before the case closes.

Mr. Adams: I would like at this time to offer the [666] depositions of Lieut. Hewins and Lieut. Bartlett. I believe the court has read those depositions?

The Court: I have read them. [666a]

United States
Circuit Court of Appeals
For the Ninth Circuit.

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Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION,
LTD., a Corporation, and J. M. ANDERSEN,
Appellees.

(And Fourteen Consolidated Appeals.)

Apostles on Appeal

In Three Volumes

FILED

VOLUME III

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Pages 961 to 1432

PAUL P. O'BRIEN,
CLERK

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for the Southern District of California,
Central Division

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STERLING CARR, as Trustee in Bankruptcy of NIPPON YUSEN KABUSHIKI KAISYA, a Corporation, Bankrupt, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION, LTD., a Corporation, and J. M. ANDERSEN,

Appellees.

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(Title Continued on Succeeding Pages.)

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Apostles on Appeal
In Three Volumes

VOLUME III
Pages 961 to 1432

Upon Appeals from the District Court of the United States
for the Southern District of California,
Central Division

SAKITO EXHIBIT G.

DEPOSITIONS OF SPENCER F. HEWINS
AND DAVID H. BARTLETT.

Depositions of Spencer F. Hewins and David H. Bartlett, on behalf of Respondent-Claimant-Petitioner and Cross-Libelant Nippon Yusen Kabushiki Kaisya, in the above entitled actions, now pending in said court, before C. W. McClain, a Notary Public in and for the County of Los Angeles, State of California, at Room No. 8 Customs House Building, San Pedro, California, on Monday, August 11, 1941, commencing at the hour of 2:00 o'clock p. m. [675]

Mr. Adams: In connection with these depositions, for the purpose of the record, and at the suggestion of counsel, may it be stipulated, gentlemen, that all objections as to materiality, relevancy and competency are reserved until the time of trial, and that objections as to the form of questions are waived unless noted at the time?

Mr. Bullard: So stipulated.

Mr. Collins: So stipulated.

Mr. Briney: So stipulated.

Mr. Eastham: I so stipulate.

Mr. Clough: So stipulated.

Mr. Allen: So stipulated.

Mr. Montgomery: So stipulated.

Mr. Lippert: So stipulated.

Mr. Adams: Mr. Notary, I have already handed you notices of the depositions, which I will ask you to either attach to the depositions, as is your custom, or file separately with the clerk. Will you now swear Lieutenant Hewins? [677]

SPENCER F. HEWINS,

called as a witness in behalf of Respondent-Claimant-Petitioner and Cross-Libelant Nippon Yusen Kabushiki Kaisya, being first duly sworn, testified as follows:

Direct Examination

Q. By Mr. Adams: Lieutenant Hewins, will you kindly state your full name?

A. Spencer Foster Hewins.

Q. You reside, do you not, in San Pedro?

A. Yes, sir.

Q. You are connected with the United States Coast Guard Service, are you not?

A. Yes, sir.

Q. What is your rank, Lieutenant Hewins?

A. Lieutenant.

Q. Did you hold that rank on September 4, 1940?

A. I did.

Q. How long have you held that rank?

A. Since 1936, May 15th.

Q. Further, by way of a few preliminary questions, will you tell us how long you have been in the Coast Guard Service?

A. I entered the Coast Guard Academy at New London, Connecticut, in the month of September, 1937.

Q. Had you had experience at sea prior to your going into the Academy? [678]

A. I was brought up on the water by my father, but no previous merchant marine service.

(Deposition of Spencer F. Hewins.)

Q. After your graduation from the Academy did you serve aboard Coast Guard vessels?

A. Yes, sir. I had a total of nine years service afloat. It would be closer to ten years service afloat.

Q. Your graduation from the Academy was in 1927?

Q. I entered the Academy in 1927 and graduated in 1930.

Q. I believe I understood you to say 1937.

A. 1927. I did say '37.

Q. But 1927 is correct? A. 1927.

Q. You are presently stationed aboard the Coast Guard Cutter "Hermes", are you not?

A. Yes, sir. I am in command of that vessel.

Q. How long have you been in command of that vessel? A. Since the 2nd of February, 1940.

Q. You were in command of that vessel, were you not, on September 4, 1940? A. Yes, sir.

Q. On the morning of that day were you aboard the "Hermes"? A. Yes, sir.

Q. Where was the "Hermes" stationed at 7:00 o'clock a. m. on September 4, 1940?

A. We were on patrol duty and were moored to the Coast [679] Guard mooring buoy west of San Pedro breakwater light, inside the breakwater.

Q. Did you that morning receive word concerning a collision between the "Sakito Maru" and the barge "Olympic II"? A. We did.

Q. About what time, if you recall, did you receive that message? A. Very close to 7:20.

(Deposition of Spencer F. Hewins.)

Q. Were you directed by that message to go to the scene of the collision?

A. No, sir. I proceeded on my own responsibility.

Q. Did you immediately proceed after receipt of the message? A. Yes, sir.

Q. Will you describe to us, Lieutenant Hewins, the condition of the weather as you proceeded to the scene of the collision?

A. When we got away, at approximately 7:30, the fog was very thick, and I ordered all hands to clear the forward compartments of the vessel as a safety precaution in the event of collision, and proceeded at full speed to the scene of the accident. As we approached, this distance being about three miles, the fog was rapidly lifting and becoming thinner as we proceeded seaward. This was due partially to the fact that the fog was lifting and thinning [680] generally, and also due to the fact that the character of the fog was changing with the rising of the sun, which penetrated the fog at a less angle and improved the visibility. In the early morning, with the sunlight striking the fog at an acute angle, it sometimes appears to be thicker than it would were the sun overhead. In any event, when we arrived at the scene of the collision the visibility was approximately one mile.

Q. About what time was that, Lieutenant Hewins? A. 10 minutes after 8:00.

Q. What course did you steer as you left the

(Deposition of Spencer F. Hewins.)

entrance way to the harbor and proceeded toward the scene of the collision? A. 160° true.

Q. Will you describe what you observed when you arrived at the scene of the collision?

A. I was somewhat hampered in arriving at the scene by the earlier clearance from the harbor of a merchant vessel whose whistle I could hear ahead. As I overtook this vessel and it became apparent through the fog, he was observed to make a sharp turn to the right. I maneuvered around his stern to port, and when becoming clear of this vessel I could see numerous small craft and scattered wreckage on the surface of the water. We reduced speed as we approached, and observed one lifeboat from the Japanese ship "Sakito Maru", and approximately eight assorted small [681] craft, and the fishing barge "Point Loma", and the fishing barge "Samar", the latter two vessels anchored in their usual position. The "Hermes" cruised the area in search of survivors and were unable to locate any survivors or any bodies. I sent Lieutenant D. H. Bartlett, my executive officer, to board the "Sakito Maru" and to examine its log and inquire as to the collision of the Master.

Q. While Lieutenant Bartlett was aboard the "Sakito Maru", where was the "Hermes"?

A. I continued to cruise the area in the hope of picking up the survivors, and there was a boat from the "Olympic" floating around in the mass of wreckage, and several other small groups of wreck-

(Deposition of Spencer F. Hewins.)

age in which it would be easy to overlook a body or a possible survivor, and I was carefully searching the entire surface of the water for that purpose.

Q. Do I understand that you observed floating among the wreckage a lifeboat from the "Olympic II"?

The Witness: Now, this is not on the record.

(Short discussion off the record.)

Q. By Mr. Adams: Lieutenant Hewins, in view of the off-the-record discussion which we just had, I think it would perhaps be well for you to state on the record certain directions that have been given to you by your commanding officer with respect to the scope of our examination here today. Would you kindly state what they are? [682]

A. I have been directed by the Commander of the Los Angeles Division of the United States Coast Guard to answer such questions as may be directed to me with respect to the location of the vessels in this collision and the state of the weather on the day in question, and I will be forced to limit my answers to these qualifications.

Q. Now, Lieutenant Hewins, did you, after you arrived at the scene of the collision, tie up your vessel or anchor at any time?

A. No, I never made fast at that time, but I was directed later to maintain a position in the scene of the wreck, which had become a menace to naviga-

(Deposition of Spencer F. Hewins.)
tion, and to warn approaching vessels of its presence.

Q. Did the "Hermes" remain, then, in the scene of the wreck for that purpose? A. Yes.

Q. Were you tied up to a portion of the wreck or an anchor that was used by the "Olympic" for mooring?

A. At first I anchored in the vicinity, and later moored to the anchor or ground tackle which had previously been used as the stern anchor for the "Olympic".

Q. While you were anchored, or while you were tied up to that mooring, was the condition of the weather such with respect to visibility that you thought it necessary to sound any fog signals?

A. I do not think this limitation applies to the weather on [683] that particular day.

Q. On that particular day, while you were cruising in that vicinity, was the condition of the weather such with respect to visibility that you were required to sound signals?

A. I continued to sound fog signals for an appreciable period after arriving at the scene. I don't recall, due to the many events which were occurring, just when I stopped the whistle, but it was after we arrived.

Q. Do you recall what the visibility was at the time you stopped sounding your signals?

A. Well, if I followed my usual procedure, it would be about a mile and a half to two miles. It was that distance, a mile and a half to two miles.

(Deposition of Spencer F. Hewins.)

Q. If visibility were less than that, you would have continued to sound the fog signals?

A. Yes.

Q. What signals did you sound?

A. One blast every minute.

Q. Was that also true while you were anchored and tied up, or did you sound signals after you anchored?

A. I didn't sound signals after I had anchored.

Q. Lieutenant Hewins, were you familiar with the location of the "Olympic II" prior to the time you made this trip out there to the scene of the collision? A. Yes, sir. [684]

Q. You had observed her anchored in that position prior, had you? A. Yes, sir.

Q. Had you also observed the other two barges you have mentioned, the "Point Loma" and the "Samar"? A. Yes, sir.

Q. Do you know whether the "Samar" was also called the "Rainbow"?

A. If I remember correctly, she had "Rainbow Pier" painted on her side.

Q. She has been referred to from time to time in these proceedings as the "Rainbow" barge, as well as the "Samar".

A. I believe that is the same barge that had "Rainbow Pier" in four foot letters on the side.

Q. You were familiar with the location of those other two barges? A. Yes, sir.

Q. Did you at any time fix the position of the wreck? A. Yes, sir.

(Deposition of Spencer F. Hewins.)

Q. When did you do that, and by what means?

A. I first fixed the position of the wreck on the morning of the collision, for the purpose of issuing a radio warning to all vessels that she had been sunk and constituted a menace to navigation. At that time I fixed her position by compass bearing on Seal Beach Stack, San Pedro breakwater light, Point Firmin light, from the "Hermes", in close [685] proximity to the wreck. On the morning of the A Board hearing in this building, I further fixed the position of the wreck by sextant angles from the barge over the wreck from which the diver was operating. In this manner I made an exact fix by sextant angles on six charted objects.

Q. You spoke of the day of the A Board hearing. Will you give that date? I think it appears on that copy you have there.

A. Friday, September 6th, 1940. Did it run for more than one day?

Q. It did run for more than one day, but I think that was the first day of the hearing, and I think that is the day you testified.

Mr. Collins: I think the testimony shows that he testified on the afternoon of the first day.

A. It was in the afternoon some day.

Q. By Mr. Adams: In other words, it was the morning of that day that you took the position by sextant?

A. Yes. That was the position of the wreck as she lay on the bottom.

(Deposition of Spencer F. Hewins.)

Q. What was the bearing of that position with reference to the breakwater light?

A. From the breakwater light to the wreck, $159\frac{1}{2}^{\circ}$ true. The distance was 3.3 miles.

Q. Could you, Lieutenant Hewins, fix that position on this chart which I have here? I have some parallel rules [686] or a divider. A. Yes.

Q. Will you kindly do so? A. Yes, sir.

Mr. Adams: Let me state for the purpose of the record that this is Geodetic Chart No. 5101.

A. On this chart it will be more or less approximate, and if there is any difference in the position indicated on this chart and on the chart in the possession of the A Board, the position indicated on the chart before the A Board would be the most accurate.

Q. They had a larger chart there?

A. Yes. That was chart 5143, Coast and Geodetic Chart 5143.

Mr. Eastham: And what is this number?

A. This is 5101.

Mr. Adams: Now we can go off the record until Lieutenant Hewins fixes that position, and then he can spread out the map there.

(Off the record.)

Q. By Mr. Adams: Now, Lieutenant Hewins, you have fixed the position on this chart, have you, of the wreck? A. Yes.

Q. And you have indicated that by a dot with a circle around the dot, and a notation off to one side,

(Deposition of Spencer F. Hewins.)

"Location wreck of Olympic II," with your initials in another circle; [687] is that correct?

A. That is right.

Mr. Montgomery: This is the old chart?

Mr. Adams: That is 5101. It is a new chart, but it is a chart that they were using aboard the ship "Sakito Maru".

Mr. Montgomery: There is a later chart, isn't there?

The Witness: Well, now, wait a minute. There is another chart of this area, which is an experimental chart. You are referring to one tinted blue. They have contour lines on it.

Mr. Adams: Now, Lieutenant Hewins, if you will resume the chair there, I have a few more questions.

Q. By Mr. Adams: From your observations at the scene of the collision, do you know whether or not the position which you have described and indicated for the wreck was substantially the same position as the "Olympic II" was anchored in prior to the collision?

A. Yes. She was within 150 feet of her former position. She was slightly inshore from the previous position.

Q. That is, the wreck was slightly inshore of her previous position? A. Yes, sir.

Q. Had you had occasion to observe the position of the "Olympic II" prior to the collision?

A. Yes, sir.

Q. With reference to the course normally taken

(Deposition of Spencer F. Hewins.)
by vessels entering Los Angeles harbor from the south and [688] leaving Los Angeles harbor southbound?

Mr. Bullard: I wish to object to the question, on the ground that it calls for the conclusion of the witness, and no foundation has been laid.

Mr. Adams: My question asked if he had had occasion to observe the course of vessels. Will you answer the question, Lieutenant Hewins?

A. Yes, I have had occasion to observe the course of vessels entering and leaving Los Angeles harbor.

Q. Can you state what those occasions were? In other words, how did you come to be familiar with the courses taken by vessels entering and leaving the harbor bound for those destinations?

Mr. Bullard: Bound for what destinations?

Q. By Mr. Adams: Well, vessels coming from the south for Los Angeles harbor and vessels leaving Los Angeles harbor and southbound for various destinations?

The Witness: Don't take this down.

(Off the record.)

A. In the general performance of my duties in this area, or any area, I must take cognizance of any and all vessels sighted, their apparent occupation, course and speed, and the name of home port.

Q. By Mr. Adams: Will you tell us, Lieutenant Hewins, what the position of the "Olympic II" was prior to the collision, with reference to the courses

(Deposition of Spencer F. Hewins.)

of vessels [689] approaching Los Angeles harbor from the south and leaving Los Angeles harbor south-bound?

Mr. Bullard: I wish to interpose an objection to the question, on the ground that it is vague and indefinite and ambiguous, and that it calls for the conclusion of the witness, and no foundation has been laid.

Mr. Eastham: I want to join in that same objection.

Mr. Lippert: I also object on the ground that it is not definite as to time.

Mr. Adams: We will clear up one or two of these apparent objections.

Q. By Mr. Adams: Lieutenant Hewins, before putting that question to you, let me ask you over what period of time did you make these observations of vessels entering and leaving Los Angeles harbor?

A. From the 2nd of February, 1940, to date.

Q. Has that been both in the daytime and night-time? A. Yes, sir.

Q. Now will you answer the question with reference to the position of the "Olympic II" prior to the collision and the relation of that position to the courses of vessels entering Los Angeles harbor from the south and leaving Los Angeles harbor south-bound?

Mr. Bullard: The same objection as before stated.

Mr. Montgomery: I wish to join in that objection.

Mr. Eastham: I join in it too. [690]

Mr. Clough: The same objection.

(Deposition of Spencer F. Hewins.)

A. The general course of outgoing vessels bound south for Panama and San Diego and Mexican and Central American ports varies from 160 to 162 from the breakwater entrance.

Mr. Lippert: Are those degrees?

A. Degrees, yes. Bound in, from the above mentioned ports, there is a larger variation, caused by unfamiliarity with the port, but in general, the majority of vessels approach Los Angeles harbor from the southward on 340 true, and they pass very close, within a matter of yards, of the anchored barges.

Mr. Lippert: Is that "anchored barge" or "barges"?

Mr. Adams: Barges.

Q. By Mr. Adams: Prior to the collision, Lieutenant Hewins, had you observed vessels entering Los Angeles harbor from the south passing the barges, including the "Olympic II"?

A. Yes, sir.

Q. Was there any one side particularly that they passed on, or did they pass on both sides?

A. They usually passed west. I don't remember any vessel passing to the eastward of the barges.

Q. When you say the westward, that would mean that they had the barges on their starboard hand?

A. Entering, yes.

Q. What about the vessels leaving Los Angeles harbor [691] southbound?

A. They also passed to the westward of the barges.

Q. That would mean that they had the barges on their port hand? A. Yes, sir.

(Deposition of Spencer F. Hewins.)

Q. Can you tell us further with reference to the position of the "Olympic II" and these other barges, and the relation of the position of the barges to the track normally taken by other vessels, from your experience in lying at the scene of the collision?

Mr. Bullard: May I have the question read, please?

(Question read by the reporter.)

Mr. Adams: Do you understand that?

A. I think so.

Mr. Bullard: I wish to object to the question, on the ground, in the first place, that it is a compound question, and I believe it is an unintelligible question, and further on the ground that it calls for the conclusion of the witness, and no foundation has been laid.

Mr. Adams: Do you understand the question, Lieutenant Hewins?

The Witness: I would like to have it read over again.

(Question re-read by the reporter.)

Mr. Adams: Let me reword that question.

Mr. Briney: I wish to object to that as not being intelligible. [692]

Mr. Adams: Since my grammar has been assailed, I will reword the question.

Q. By Mr. Adams: Lieutenant Hewins, as the "Hermes" lay at the scene of the wreck, did you have occasion to observe vessels passing in that vicinity?

A. Yes.

(Deposition of Spencer F. Hewins.)

Q. Will you describe to us what you observed in that connection, with reference to which side of you they passed or the course that they took?

A. I know what is asked, but some place I have got to draw a line. It is getting awful close to the place where I have got to draw a line. And there is another thing, too, that I understand that I am going to be cross-examined here, and the cross-examination, the testimony has to refer to the facts brought out in the direct questioning, and I am limited to place and weather.

Mr. Bullard: I was going to suggest to you, Lieutenant Hewins, that if you feel that you are being forced to expand the scope of this inquiry by the present questions, subsequent questions would be somewhat more difficult.

The Witness: That is what I had in mind.

Mr. Adams: You understand that I have no desire to take you outside the scope.

The Witness: Yes.

Mr. Adams: My question was intended to elicit testimony with reference to the location of the barges, with [693] reference to the courses taken by the vessels entering and leaving Los Angeles harbor, and I simply thought that your testimony might be supplemented by such observations as you had made while you lay at the scene of the wreck, in addition to the observations you made prior to the collision.

Mr. Eastham: I object as not binding on libelant Culp, as to what happened after the wreck.

(Deposition of Spencer F. Hewins.)

Mr. Adams: If you feel free to answer it, you may do so. If you don't, kindly so state.

A. I saw nothing while I was at anchor in the scene of the wreck to change my opinion as previously expressed.

Q. By Mr. Adams: I have asked you, Lieutenant Hewins, what you observed to be the courses of other vessels. Are you free to state what course you steered when you left Los Angeles harbor southbound?

A. I always steer 160 true until such time as that bearing intersects with the red track laid down on the chart.

Q. That red track laid down on the chart is the course of vessels coming up the coast or going down the coast between Los Angeles harbor and San Diego, is it not?

A. Yes. It is also the course taken by vessels running coastwise on the Pacific Coast, regardless of where they are coming from or bound to, if they are coasting, running up or down the coast.

Q. It does not represent the course of 340° true that you mentioned awhile ago, does it? [694]

A. No, sir, and it doesn't go into Los Angeles harbor either. In other words, you have got to leave that line to get into Los Angeles harbor, and the customary way to leave it is on 340.

Q. You mean to leave the harbor is on 340?

A. No, sir. To leave this line entering the harbor.

Q. Again with reference only to the position of

(Deposition of Spencer F. Hewins.)

the "Olympic II" prior to the collision, can you tell us whether or not you ever boarded the "Olympic II" or stood nearby while you sent a party aboard? I mean, if there was such a case, can you tell us about it, so as to indicate what influence that might have had on your fixing the position of the "Olympic II" and your knowledge of its location?

A. I am afraid to answer that question would be departing from the instructions laid down by the Commander. Don't take this down.

(Statement off the record.)

Mr. Adams: I might state for the purpose of the record that if you feel that that is outside the scope of the authority granted I will withdraw the question.

Q. By Mr. Adams: When you arrived at the scene of the collision did you observe where the "Sakito Maru" was anchored with reference to the wreckage that you observed floating on the water?

A. Yes, sir.

Q. About how far distant was the "Sakito Maru" from [695] that wreckage?

A. Well, it is very difficult to judge distance under those circumstances, unless you are definitely setting out to do so, but I would say it was between 500 and 800 yards, and the direction was southeast generally.

Q. From the wreck?

A. From the wreck. I would like to change that and make it between 800 yards and 1,000 yards.

(Deposition of Spencer F. Hewins.)

Q. I believe you have already testified that you observed the lifeboat of the "Sakito Maru" at the time you arrived? A. Yes.

Q. Could you describe to us what you observed the lifeboat do before she returned to the "Sakito Maru"?

A. As I approached the scene of the wreck the lifeboat was returning from the wreckage to the "Sakito Maru", and was about midway between the two, in charge of an officer.

Q. Did she return at once, or did you continue to see her cruise in the waters there?

A. She stayed in the water all morning. Most of the time she was examining damage to her bow. She was well holed above the water line.

Q. As you arrived she appeared to be returning from the scene of the wreck to the "Sakito Maru"; is that correct?

Mr. Bullard: I object to that question as calling for [696] a conclusion of the witness, and also as leading and suggestive.

Mr. Adams: Well, I will withdraw the question.

Q. By Mr. Adams: Lieutenant Hewins, where was the lifeboat from the "Sakito Maru" at the time you first arrived?

A. It was in between the wreckage and the "Sakito Maru", headed for the "Sakito Maru".

Q. Did you see her return to the scene of the wreck at any time? A. No.

Q. Do you know what time she was pulled out of the water? A. I don't recall seeing it.

(Deposition of Spencer F. Hewins.)

Q. Did you observe two boats from the "Sakito Maru" in the water at any time?

A. I am not sure whether or not they had two in the water. When I approached I only recall seeing one. I believe later on they may have put down a second boat to examine damage in the bow, but I am not certain that there were at any time two boats in the water. I think there were.

Q. Could you indicate the position of the barges with reference to one another by drawing a diagram on a sheet of paper?

A. Yes, if there is a stipulation that it is being done from memory and that distances and bearings wouldn't be exact. It would be a very close approximation. [697]

Q. Will you do so, under those conditions?

Mr. Bullard: Wouldn't it be easier for the witness and better for the record as well to have the indication of the position of the additional barges made either on the chart already marked by the witness or a similar chart?

Mr. Adams: Mr. Bullard, that chart is drawn to such a small scale that I don't think the position of the other two barges could be shown.

The Witness: The thickness of that pencil on that chart is one mile, and the distance between the two furthest apart wasn't a mile. If it was done, it would be a matter of putting pencil dots down, or I could put it on an enlarged scale at the bottom of the chart, if you would prefer that.

(Deposition of Spencer F. Hewins.)

Mr. Bullard: I was merely making the suggestion.

Mr. Adams: I think if you continue that diagram, Lieutenant Hewins, it will serve the purpose.

Just to keep the record clear, I think I will introduce this chart that you previously marked before, which was the Geodetic chart No. 5101. I will offer that in evidence and ask that it be marked Lieutenant Hewins' Exhibit No. 1.

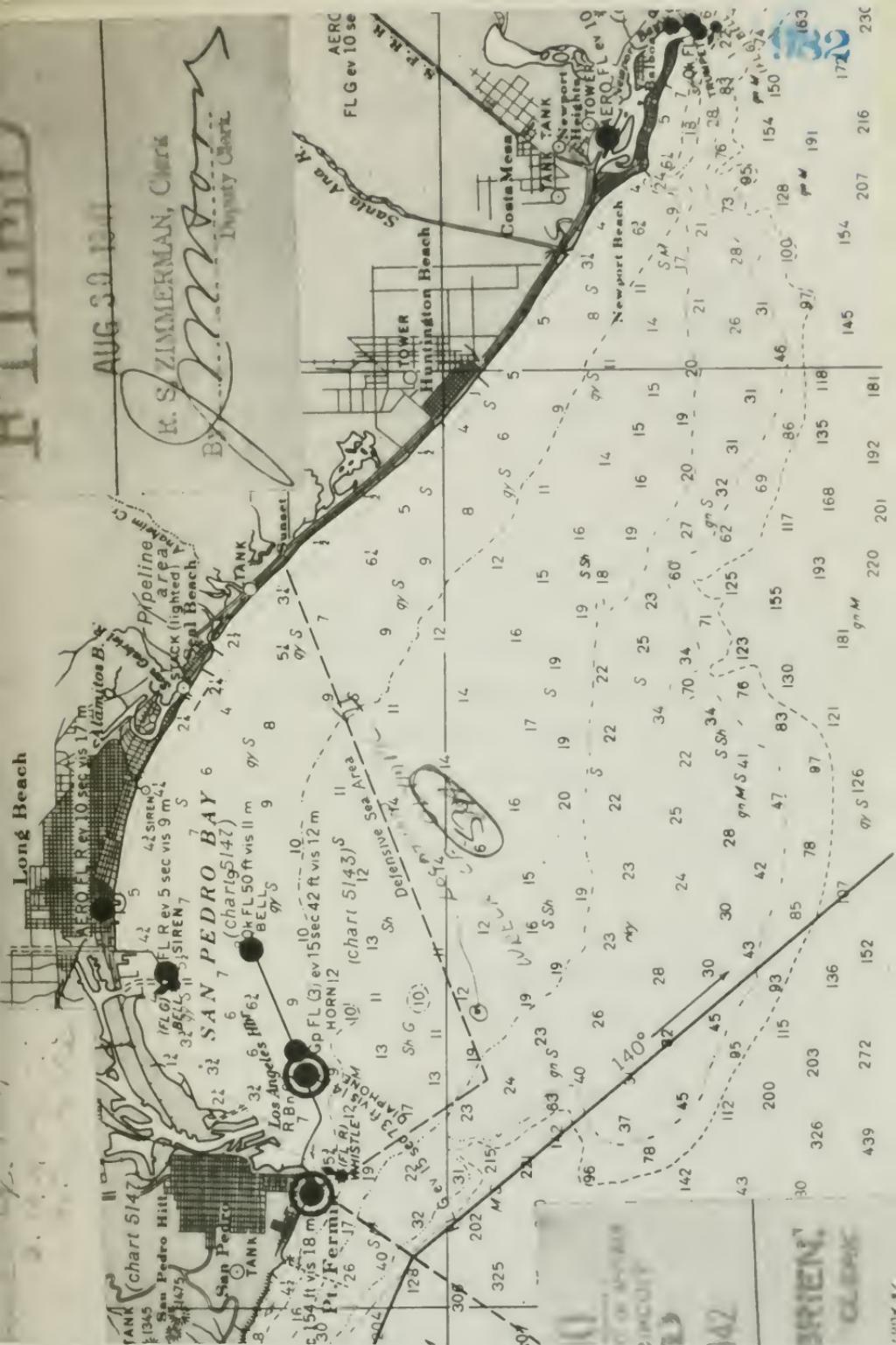
(Said chart so marked.)

Long Beach

AUG 30 1971

K. S. LIMMERAN, Clerk

University Clerk



(Deposition of Spencer F. Hewins.)

Mr. Montgomery: I wish to object to the introduction of chart 5101, on the ground, 1, that it is not the most recent chart, and, 2, that it is on such a large scale as not to indicate anything, and doesn't prove or disprove any issue in the case, and that there is a chart, to-wit, 5143, which [698] would present the testimony of the witness in a form to have probative value.

Mr. Adams: For the record, I have heard comments about this chart not being the latest chart, and if somebody will point out to me in what respect this chart is at all out of date in so far as the facts of this collision are concerned, or in what respect any later chart would have any greater probative value than this chart, then I will be glad to make any showing that is necessary on that score. If anyone has any objection to this chart, I will ask them to state them for the record at this time.

Mr. Montgomery: Our objection to this chart is that there is a later chart bearing the same number, 5101, which charts this wreck. That is as to my first objection only.

Mr. Adams: Now, Mr. Montgomery, your point is that we should use the chart which shows the wreck of the "Olympic II" on it?

Mr. Montgomery: That is the point.

Mr. Adams: Is there any other point that you have in mind with reference to a later chart, in so far as a later chart shows anything that this chart does not show?

Mr. Montgomery: Not with reference to the later chart, but with reference to a chart on a different

(Deposition of Spencer F. Hewins.)

scale, which would allow for more accurate placing of these various vessels and other points. I believe we should have that chart 5143, instead of 5101. [699]

Mr. Adams: I will state for the purpose of the record that this chart just offered in evidence is the type of chart that was used by the officers aboard the "Sakito Maru" in navigating up the coast and approaching Los Angeles harbor. And I will state secondly, that if anyone wishes to transpose the positions fixed on this chart by Lieutenant Hewins to chart 5143, it is a very simple matter to do so, and they are welcome to do so.

Q. By Mr. Adams: Now, Lieutenant Hewins, referring to the diagram which you have drawn, which I will ask that the reporter mark as Lieutenant Hewins' Exhibit No. 2 for identification, just describe on that diagram the position of the three barges, namely, the "Olympic II", the "Samar" and the "Point Loma"?

A. I have indicated their relative positions from one another, without attempting to draw either the barges or the distances to scale.

Q. You have indicated also a compass direction on the diagram, have you not? A. North, yes.

Q. And that is at the top, marked with an arrow, and below that an "N"? A. Yes.

Q. Then you have drawn three figures, representing the barges, with arrows, which I take it extend from the bows of each of the barges, so that they represent the heading [700] of the barges?

A. The approximate distance between the barges, yes.

(Deposition of Spencer F. Hewins.)

Q. You have also indicated by broken arrows between the "Olympic II" and the "Samar", and have marked in the broken area, "1/3 mile." Does that represents what you estimated the distance to be between the "Olympic II" and the "Samar"?

A. Yes, sir.

Q. When we are referring to the "Olympic" we are referring to her position prior to the collision; is that true? A. Yes.

Q. You have also indicated on the diagram a distance between the "Olympic" and the "Point Loma", that being one-eighth of a mile? A. Yes.

Q. Is that your estimate of the distance between those two barges?

A. Yes, that is an approximation.

Q. There is a line drawn from the stern of the "Olympic". Does that represent one anchor line, that is, the stern line?

A. That is the stern line they used under some circumstances to keep the vessel in the same position, and there is a buoy attached to an anchor or mooring of some type, and it is the same buoy to which the "Hermes" later moored, and to which I have referred in my previous testimony.

Q. As a vessel approached Los Angeles harbor from the south on a course of 340° true, which would be the first [701] barge that she would come nearest, or would that depend on whether she was passing the barges to the right or to the left of them? Let me withdraw that question and ask it in this way. Was the "Olympic II" anchored furthest away from Los

(Deposition of Spencer F. Hewins.)

Angeles harbor, the entrance way to Los Angeles harbor?

Mr. Briney: Than which of the other two?

Mr. Adams: Than either of the other two.

A. I would say the distance from Los Angeles harbor entrance to the "Olympic" would be identical with the distance to the "Samar".

Q. If a vessel from the south, approaching Los Angeles harbor, passed the group of barges on the westerly side, as you indicated they most normally would, what would be the nearest barge?

A. The "Olympic II."

Q. Would that be the first barge that that vessel would encounter or come in the vicinity of in passing on that side?

A. It would if their course took them through the position of the "Olympic", rather than through the position of the "Samar".

Q. In other words, the answer to that question of course, depends upon the exact position of the vessel approaching Los Angeles harbor?

A. Yes. You have got two ships anchored in a line, at [702] right angles, or nearly so, to the course of vessels entering the harbor.

Q. In other words, a vessel steering 340° true could be passing that group of barges on both sides or through the middle?

A. Both sides, through the middle, or a hundred miles either side.

Mr. Adams: I offer that diagram in evidence.

(Said diagram marked Lieutenant Hewins' Exhibit No. 2.)

Lieutenant Hennings Esq. 7th Regt.
8-11-41 C. W. M. Claine
Notary Public

CL YOUNG II

130

(Deposition of Spencer F. Hewins.)

Mr. Montgomery: I object to that upon the ground that it does not tend to prove or disprove any issue in the case, and that it is inaccurate, and that the points shown thereon would better be shown on chart No. 5143.

Mr. Adams: You may cross-examine.

Mr. Bullard: I have a few questions.

Cross-Examination

Q. By Mr. Bullard: At the time you made the six point fix of the position of the wreck you were stationed on the barge servicing the divers then working on the wreck; is that correct?

A. I was stationed on my own ship. That was the position that I was occupying, yes.

Q. And do you know whether or not that was directly over the divers who were working on the wreck?

A. I couldn't see the divers, but I could see the wreck [703] mast right under me.

Q. So, then, you were at least over some portion of the wreck at that time?

A. Yes, sir. I was over the foremast of the wreck.

Q. Could you determine the bearings of the axis of the wreck? A. Yes, sir.

Q. And how was it headed?

A. It was headed south of southwest, that is, between southwest and south; I should say south-southwest.

Q. When had you last observed the barge lying at her mooring prior to this collision?

(Deposition of Spencer F. Hewins.)

A. That is a date it is impossible to fix. I had seen her practically every day I had been on patrol for as long as she had been out there.

Q. Did you have occasion to observe the nature of her moorings?

A. Yes. She had a stern mooring out for the sole purpose, apparently, of keeping her bow into the sea, so she wouldn't roll.

Q. There is a prevailing westerly swell?

A. Yes, and the ground swell is westerly.

Q. So her heading would not change substantially from day to day? A. No, sir.

Q. And her heading was approximately what the last time [704] you saw her before the collision?

A. Approximately west.

Q. Did you at the time of making the six point fix make any notes of your observations?

A. Yes.

Q. Are those notes still available, Lieutenant Hewins?

A. I believe those notes are in the possession of the U. S. Engineers.

Q. Do you know whether or not those notes were used in preparing a subsequent Government chart showing the wreck?

A. I was requested by the Army Engineers at San Pedro to furnish them any information I had on the subject, and went to their office for the purpose of making a comparison with their own findings. My findings agreed exactly with one of two positions which they had, which position is now, or was taken

(Deposition of Spencer F. Hewins.)

as—they were taken as the definite position of the wreck.

Q. You have not in your possession now a copy of the results of your observations at that time?

A. Here?

Q. Yes. A. No, I haven't, here.

Q. And the bearing which you have given us of 159½ true from the San Pedro breakwater light, distance 3.3 miles, is based upon your recollection?

A. Yes. [705]

Q. Do you recall any of the other bearings or any of the other points?

A. A sextant angle or series of angles such as I took would not be related to true north. In other words, whereas a bearing has a relation to true north, or the top of the sheet, the angles which I took were from known points on the beach. I took Point Firmin lighthouse, Trona stack.

Q. That is the large stack at Seal Beach?

A. No. It is the gypsum plant.

Q. On South Pacific Avenue, in San Pedro?

A. And Point Firmin lighthouse, the breakwater lighthouse, and the hotel in Long Beach which is charted—

Mr. Adams: The Hilton Hotel?

A. I think it is the Hilton, but I wouldn't say for sure. It is some charted hotel in Long Beach. And the Seal Beach stack. Those angles—I can't remember anything—I made no effort to remember.

Q. By Mr. Bullard: Before coming here to tes-

(Deposition of Spencer F. Hewins.)

tify today did you refer back to any of your original notes in securing the bearing of 159 $\frac{1}{2}$ true?

A. Yes, sir. That was applied on the ship's chart, which is used in navigation of the vessel.

Q. On the chart of the "Hermes"?

A. Yes.

Q. And do you recall whether it was exactly 159 $\frac{1}{2}$? A. Yes, sir. [706]

Q. That is 159° and 30'?

A. Yes. I remember that because it is one-half a degree east of the course which I habitually used in leaving Los Angeles when bound for San Diego.

Q. With reference to that course of 160°, which you have mentioned, from what point was that course taken?

A. A point midway between the east end of the San Pedro breakwater and the west end of the breakwater extension.

Q. After making that course going to the position of the "Olympic", what distance did you find separated you from the "Olympic"?

A. The distance would vary on different occasions, due to the strength of the sun, the strength of current, and strength of the wind. Generally speaking, it would pass within a matter of a thousand yards west of the wreck up to 200 yards east of it, perhaps more than 200 yards east of it. It also depends on the steering, the man at the wheel.

Q. I believe you testified that coasting vessels generally while southbound from San Pedro, what-

(Deposition of Spencer F. Hewins.)

ever may be their southerly destination, follow substantially that same course?

A. Yes, sir. Provided they leave San Pedro?

Q. Yes. It would make no difference whether they may be destined for San Diego or for the Panama Canal?

A. Yes. The vessels usually take a landfall at Point Loma or the Coronado Islands, and then set their course down [707] the coast from there. Vessels not stopping in Los Angeles would, on some occasions, pass the Channel Islands on their port hand, striking directly for some point on the Mexican Coast.

Q. And similarly do I understand your testimony correctly that all vessels northbound for Los Angeles from the south generally follow the course of 340° true?

A. I didn't testify to that. They leave the steamer track on 340 true to enter Los Angeles harbor. The course they would steer from San Diego would be 320 true, as indicated on chart 5101.

Q. Well, the course of 320 true, as indicated on chart 5101, is, then, the course customarily followed by vessels coming to Los Angeles from San Diego?

A. Yes, sir. And it is so recommended in the U. S. Coast Pilot for the Pacific Coast.

Q. You have mentioned the U. S. Coast Pilot for the Pacific Coast. Would you describe that publication, Lieutenant Hewins, in general what it is?

A. The Coast Pilot is the result of years of re-

(Deposition of Spencer F. Hewins.)

ports by master mariners to Washington, giving in general recommended courses, harbor facilities, characteristics of main headlands, lights, and sailing directions for entering ports. It gives currents for localities, both tidal and wind currents, which may be expected, and is in general a publication for the assistance of mariners operating along [708] the coast described by the particular volume referred to.

Q. And in general is it your opinion that the courses recommended by the Coast Pilot from point to point can be relied upon? A. Yes.

Q. In other words, it is more or less of a seaman's Bible, particularly for seamen who are not too familiar with local conditions? A. Yes.

Q. Do you happen to know what the recommended course is from San Diego to Los Angeles, as given in the Coast Pilot?

Mr. Adams: I object to that as incompetent, irrelevant and immaterial, and not tending to prove or disprove any issue within the scope of this case. The course from San Diego harbor to Los Angeles harbor has no bearing upon this particular case.

The Witness: Now, what am I to do?

Mr. Adams: You may answer it. I just stated that for the purpose of the record.

A. If the Coast Pilot does recommend a particular course from San Diego to Los Angeles, I am not certain what that course may be. However, it is stated in the Pilot that coastwise charts of the

(Deposition of Spencer F. Hewins.)

Pacific Coast are marked with a red line, which indicates the course customarily taken by master mariners on this coast, and for that reason I [709] have been in the habit of following the recommendations as shown in those red lines.

Q. I believe in your testimony on direct you stated that vessels outgoing from Los Angeles southbound would follow a course that varied from 160 to 162° true; is that correct?

A. That has been my experience in observing vessels leaving Los Angeles harbor, yes.

Q. Would you say that all of the vessels which you have observed leaving Los Angeles harbor bound south followed that course?

A. No. A lumber schooner would practically never follow it.

Q. It isn't an inevitable course that a vessel must follow leaving Los Angeles and going south?

A. No, sir.

Q. There is no narrow fairway or dredged channel leading southward from Los Angeles harbor which must be followed? A. No, sir.

Q. And similarly vessels which are northbound from southern ports to Los Angeles have a wide choice of waters within which they can approach Los Angeles harbor? A. Yes, sir.

Q. I have in my notes here that you testified on direct that there was a larger variation in the course of north- [710] bound vessels, but in fact they followed the course of 340° . I understand that if such

(Deposition of Spencer F. Hewins.)

was your testimony you intended it to be 320° ? It may be that my notes are wrong.

A. No, sir. I meant 340. Perhaps my testimony has not been complete enough to show what I had intended. On the chart there is a red line which is followed by most vessels.

Q. That is, from San Diego to Los Angeles?

A. Well, this chart continues on up to Puget Sound. I mean the red line continues up there, this line.

Q. Chart 5101 shows the red line only to San Diego, or in that vicinity?

A. To the south of it. To the westward it continues to the end of the chart.

Q. Then there are other charts which may be used in conjunction with 5101, which show the prolongation of the red line?

A. Yes, sir. Now, you gentlemen can see that the red line does not lead into Los Angeles harbor, and therefore if he wants to go into Los Angeles harbor a master must leave the red line, which he generally does on 340.

Q. And whereabouts is that departure usually made? A. About the hundred fathom curve.

Q. The hundred fathom curve is shown on chart 5101, is it not? A. Yes. [711]

Q. And it is your testimony that vessels northbound customarily follow the red line, 320° track, until approaching the vicinity of the hundred fathom curve, and alter their course to 340° ?

A. Yes, sir.

(Deposition of Spencer F. Hewins.)

Mr. Adams: Could we have the witness indicate what he has reference to by the 100 fathom curve?

A. On this chart the soundings are shown in various spots all over the chart, but approaching shoals they have run a line between points of equal depth, similar to contour lines on a map, and they are referred to as the 100 fathom curve, the 50 fathom curve, the 20 fathom curve and the 10 fathom curve, each curve being indicated by different symbols on the chart, the 10 fathom curve by a dash and a dot, the 20 by a dash and two dots, and the 50 by a dash and five dots, and the 100 fathom curve by continuous dashes. I don't mean to imply that a mariner would change course on the 100 fathom curve, but it so happens that the 100 fathom curve at that point intersects the generally covered course of vessels with the bearing of 160 and 340 from Los Angeles harbor.

Q. By Mr. Bullard: And that would be a convenient place to make the change of course?

A. That would be one of the factors which could guide a master in approaching. Providing his ship was equipped with sounding devices, generally speaking he would make the [712] change on his direction finder in foggy weather.

Q. You have spoken of foggy weather. Is there a different procedure for approaching Los Angeles harbor from the south in foggy weather than in approaching in clear weather?

A. As far as my experience has shown in this particular case, no.

(Deposition of Spencer F. Hewins.)

Q. Lieutenant Hewins, may I read to you from page 28 of the U. S. Coast Pilot, Pacific Coast, 1934 edition, which is the fifth edition. Counsel may examine it.

Mr. Adams: I object.

A. If you are going to read to me from that, may I ask if it has been corrected?

Q. By Mr. Bullard: The volume which I have is the third volume, complete with supplement. The supplement, I may state for your information, shows no corrections for this page.

Mr. Adams: I would like to object to the procedure Mr. Bullard is following, upon the ground that such testimony is admissible only in an attempt to impeach the qualifications of the witness, to-wit, an expert witness, and I have made no attempt to qualify Lieutenant Hewins as an expert witness for the purpose of eliciting from him expert testimony. I would be delighted to do so, if Lieutenant Hewins felt that his authority would permit him to testify as an expert on the subjects that I would like to interrogate him on. But [713] inasmuch as his testimony has not gone into the realm of expert testimony, I object to this attempt to introduce so-called impeaching testimony, I suppose endeavoring to show that his memory concerning the Coast Pilot might not be exact or accurate.

Mr. Bullard: Mr. Adams, I might state that I am not attempting to impeach the Lieutenant's testimony. I am simply seeking to explain or interpret

(Deposition of Spencer F. Hewins.)

certain statements which appear in the Lieutenant's testimony on direct examination.

Mr. Adams: I don't see how you can refer to another outside document to explain his testimony. If there is anything in there that the court feels is material to this inquiry, that testimony can be introduced at the time of the trial. I object to it for the purpose stated.

Mr. Bullard: If the Lieutenant feels that this question is in any degree embarrassing by reason of instructions which he has received concerning the scope of his testimony in this proceeding, I will be happy to withdraw it, but before doing so I would like to state what I had in mind doing. I propose to show this page to the Lieutenant and ask him to read a certain portion of it in the record, and ask him if he believes that the recommendation as to course therein expressed is a sound recommendation to be followed when approaching Los Angeles in foggy weather. The lieutenant has already testified that, so far as he knows, there is [714] no difference in procedure in approaching Los Angeles, whether the weather be clear or whether it be foggy.

The Witness: Mr. Bullard, I am afraid that either you misunderstood what I said or I have put it very poorly, but I thought that I was referring to the general practice of vessels approaching. That is why I hesitated when I first started to answer that question. There are different ways of entering any harbor, and those different methods are used under different circumstances, and will be applied differ-

(Deposition of Spencer F. Hewins.)

ently by different masters. I didn't intend to imply that that is the only way the majority of masters come in here, because it would be foolish for me to say that I have watched the majority of them come in. The majority of those that I have seen come in, that I have observed, have come in in that manner. Now, of course, it is bound to be that in thick weather I could not observe as many vessels entering as I could in clear weather, unless I happened upon them while making an approach to the harbor.

Mr. Bullard: I believe your explanation tends to clarify your testimony considerably. I don't want to expand the scope of this beyond your instructions.

Mr. Adams: I might state, Lieutenant Hewins, that if you see no objection to answering questions as an expert, I would be quite glad to go into certain matters with you as an expert witness, and I have no objection to this question. [715]

A. I don't believe my orders could be stretched that far by any stretch of the imagination.

Q. By Mr. Bullard: As I understand it, Lieutenant, your testimony with reference to the approach of vessels from the south, whether the weather be clear or foggy, will depend somewhat upon the individual vessel involved and the experience of the master of that particular vessel?

A. Yes, sir, and also the number of times he has entered this particular port, and under what circumstances.

Q. With reference to the testimony as to different procedure whether the weather is clear or foggy,

(Deposition of Spencer F. Hewins.)

if an incoming master is not too familiar with Los Angeles harbor he couldn't go far wrong in following the recommendation of the Coast Pilot?

A. I would say that would be his recommended course.

Q. I believe you testified that you had observed the "Olympic" and the two other barges, the "Point Loma" and the "Rainbow" barge, since your first being stationed in San Pedro?

A. Since they have been out there. A couple of them went out and came back in, and went out again.

Q. And it came to your knowledge, either officially or otherwise, as to what they were doing out there? A. Yes, sir.

Q. What is the name of the locality where the "Olympic" was stationed?

A. The Kelp Bed. [716]

Q. Is there a name for it?

A. It is usually called the Kelp Bed. There is no official name.

Q. Have you heard it referred to as "Horseshoe Kelp"?

A. Yes, and also as the "Horseshoe".

Q. You have been out there on numerous occasions and observed the position of the "Olympic" and the other two vessels? A. Yes, sir.

Q. And that is a well known local fishing ground, is it not? A. Yes, sir.

Q. And usually fishing vessels of one type or another can be seen out there?

Mr. Adams: I object to the previous question and move that the answer be stricken, upon the

(Deposition of Spencer F. Hewins.)

ground that it calls for a conclusion of the witness, and, further, I don't know whether Mr. Bullard intended by his question to ask the witness whether it was a well known local fishing ground, or a fishing ground well known locally, and I object to it as calling for a conclusion of the witness, in so far as it calls for testimony of this witness as to whether it was well known as a local fishing ground.

Mr. Bullard: Well, I will withdraw the question and reframe it.

Q. By Mr. Bullard: During the course of your experience [717] here in San Pedro it has become well known to you, has it not, that that is true?

A. Yes, sir.

Q. And times when you have observed that particular portion of the ocean you have seen fishing vessels of different sizes and descriptions out there?

A. Yes, sir.

Q. Some of them anchored and some of them drifting? A. Yes, sir.

Q. And some of them cruising around looking for fish? A. Yes, sir.

Q. Have you been in San Pedro at any other time than subsequent to February, 1940, or is that the— A. Subsequent to that time.

Q. I beg your pardon. Prior to February, 1940, or is that your first experience?

A. No, sir. I was out here as a watch officer on the Coast Guard cutter "Algonquin" in 1930.

Q. How long were you here then?

A. Approximately four months.

(Deposition of Spencer F. Hewins.)

Q. Were you on shore duty or on sea duty?

A. Sea duty.

Q. And since February 2, 1940, have you been constantly operating out of San Pedro?

A. Yes.

Q. You haven't made any extended cruises, like up to [718] Alaska or the Hawaiian Islands?

A. Yes; I have gone as far as Seattle.

Q. How long were you away?

A. I am afraid I am going to have to decline to answer that.

Mr. Bullard: Very well.

The Witness: May I answer that question in this way?

Q. Yes, if you wish.

The Witness: If you will withdraw that question and ask me something along the same line, as to what was the greatest time I was away, or something like that, I could tie it in with previous questions.

Q. By Mr. Bullard: I will be happy to do so. What is the longest period of time you have been absent from San Pedro since February 2, 1940?

A. Approximately six weeks.

Q. And what is the total length of time that you have been absent from San Pedro since February 2, 1940?

A. Generally speaking, I have been operating at sea in the vicinity of San Pedro 55 per cent of that time. In other words, we have to come in for repairs and rest and relaxation of the crew.

(Deposition of Spencer F. Hewins.)

Q. With reference to the time prior to the date of the accident, which was September 4, 1940, would it be any violation of your instructions to ask you whether the "Hermes" was customarily stationed in and about the harbor [719] during that period of time?

A. That is correct; she was stationed in and about the harbor for that entire period.

Q. Now, could we also inquire as to what your duties were in general at that time?

A. The same duties, in general, as the Coast Guard, the preservation of life and property in general, and the enforcement of the collection of revenue.

Q. You were the commander of the "Hermes", and did you have any additional duties with reference to the administration of the Coast Guard?

A. Yes, sir. For a period of about three months I was also Commander of San Pedro Group, which consists of small harbor craft operating in Los Angeles harbor.

Q. Does your jurisdiction extend generally over the territorial waters of the United States in this area? A. Yes, sir.

Mr. Bullard: I have no further questions.

Mr. Collins: I will ask one or two questions.

Mr. Bullard: I beg your pardon, Mr. Collins. I have one other thing that might possibly be of some convenience.

Q. By Mr. Bullard: There has been some question raised as to the authenticity or desirability of using one particular chart, on the ground that there

(Deposition of Spencer F. Hewins.)

is a later one. I would like to show the Lieutenant chart No. 5105, bearing the printed date, "July 19, 1941", and call his attention to the [720] fact that, at a place which, to the best of my ability of observation, is almost exactly the same place that he has marked on the chart already offered in evidence by Mr. Adams, there is a notation, "Wreck", with a circle, and the figure "8", and ask him if the position marked on this chart dated July 19, 1941, which I have just described, corresponds to the position which he has marked on the other chart. I will also state that, as nearly as I can see, it is exactly the same position.

A. It looks to be just slightly westward, but, as I say, this chart is pretty large. It quite apparently refers to the barge "Olympic".

Q. You have, by means of parallel rules and divider plotted the position of the wreck of the "Olympic" on the chart dated July 19th, and bearing the indication, "Wreck", in circles, and the figure "8" beside it, and your calculation on this chart indicates the wreck within the circle marked on the chart? A. Yes, sir.

Q. And it is your opinion, is it not, then, that the position marked on the chart dated July 19, 1941, "Wreck", with the figure "8" in it, is the position of the wreck of the "Olympic"?

A. Yes. It is my opinion that it is there for that purpose.

Mr. Bullard: I have no desire to further encumber the [721] record by introducing this original

(Deposition of Spencer F. Hewins.)

chart in evidence, but I believe we have identified this chart sufficiently with the Lieutenant's testimony, so that if at any future time anyone desires to do so, they may spend 70 cents and buy one of these charts and introduce it in evidence, if they feel that it will be of any benefit. I have no further questions.

Cross-Examination

Q. By Mr. Collins: Lieutenant Hewins, as part of your ordinary duties in the Coast Guard Service, is it one of your duties to proceed to and mark wrecks of various vessels that may have sunk in navigable waters?

A. That is the duty of the Coast Guard.

Q. And is that because of the provisions of the so-called "Wreck Act", or are you familiar with the provisions of that act?

A. Well, it is not as a result of the provisions of that act, except as they may have been connected with the duties of the lighthouse service. The lighthouse service, prior to the time it was taken in as a part of the Coast Guard, was charged with the responsibility of maintaining aids to navigation. That now devolves upon the Coast Guard, and I can't state certainly whether the "Wreck Act" in particular is the basic legal requirement for the Coast Guard to perform such duties. [722]

Q. Was it as a result of your duties that you have just explained for us that you anchored near the wreck and marked it and kept warning off incoming and outgoing ships?

A. Yes, sir. One of the primary duties of the

(Deposition of Spencer F. Hewins.)

Coast Guard has always been the preservation of life and property at sea.

Q. Would you have performed the same sort of duties in connection with a wreck in any other navigable waters? If that is a question that embarrasses you and that you can't answer, I am perfectly willing to withdraw it.

A. I would say that that would be a matter of location of the navigable water in question. For example, a navigable water might be some small stream that is navigable by law, where the railroads might have to have drawbridges and things like that on it, but which might not in fact be navigated.

Q. In waters that are in fact navigated in and around Los Angeles harbor, you would have performed the same duties, if there had been a wreck in any of those waters, as you performed in connection with the wreck of the "Olympic"; is that correct?

A. I would say that would be quite probable.

Mr. Collins: I have no further questions.

Cross-Examination

Q. By Mr. Lippert: In the course of your duties, [723] have you had occasion to become familiar with the boundaries or limitations of San Pedro Bay?

A. Yes.

Q. Can you state whether or not the scene or the location of this wreck is in San Pedro Bay or outside of San Pedro Bay?

Mr. Adams: I have no doubt that the Lieutenant

(Deposition of Spencer F. Hewins.)

could probably give an opinion on that, but obviously that would be an attempt to express a legal opinion as to the confines of San Pedro Bay, and I object to the question as calling for a conclusion of the witness and encroaching upon the province of the court.

Mr. Bullard: I wish to join in Mr. Adams' objection.

Mr. Lippert: Can you answer the question?

A. San Pedro Bay was so named, in my opinion, to include a body of water which was defined by natural limitations.

Mr. Bullard: May I interrupt at this point to add this objection, that it is calling for the conclusion of the witness, and no foundation has been laid.

Mr. Adams: I will add the objection also that it goes outside the scope of the direct examination.

A. Subsequent to the original naming of the bay there have been certain man-made limitations, which may or may not limit in fact the waters of San Pedro Bay, but I am in no position to definitely state what the present limitations of that bay are. In fact, I don't know whether they have ever [724] been set.

Q. By Mr. Lippert: Did you ever know the limitations of the bay?

A. No, sir, no more than I would the limits of San Pedro channel or outer Santa Barbara passage.

Q. Can you state whether or not the scene of the collision occurred within the territorial waters of the State of California?

Mr. Adams: I object to that, obviously, on the ground that it calls for the conclusion of the witness,

(Deposition of Spencer F. Hewins.)

and no proper foundation is laid, and it encroaches on the province of the court, and is outside the scope of the direct examination.

A. I am not aware of any territorial waters of the State of California.

Q. By Mr. Lippert: If you were told that San Pedro Bay, as defined by law, extends from Point Lasuen to Point Firmin—I believe it is near Huntington Beach.

Mr. Adams: I don't believe it is shown on the chart, is it Lieutenant?

A. I don't believe it is.

Mr. Lippert: I will withdraw the question and revise it.

Q. By Mr. Lippert: Is there, to your knowledge, a point on the coast adjacent to San Pedro, or along the coast between San Pedro and San Diego, known as Point Lasuen?

A. If there is, I have never heard of it. [725]

Q. Is there a point or promontory near Huntington Beach which is commonly known as a point, or used for navigation purposes?

A. From the sea Huntington Beach is flat, without distinguishable characteristics.

Q. Referring to the chart now in evidence, Lieutenant, at the point on the coast marked "Huntington Beach", is there a line that indicates a wharf or pier?

A. Yes; there would appear to be two piers or wharves at Huntington Beach, here and here.

Q. And this one, would that be more northerly, the northernmost wharf? A. Yes.

(Deposition of Spencer F. Hewins.)

Q. Now, if you were to be told that San Pedro Bay extends from a line drawn, or, rather, an extension from Point Firmin to the northernmost wharf at Huntington Beach, could you state whether or not the location of this collision occurred within or without the confines of San Pedro Bay?

Mr. Adams: I object to the question on the ground that it calls for the conclusion of the witness, and no proper foundation is laid, and it is incompetent, irrelevant and immaterial whether this collision occurred within or outside of the San Pedro Bay.

Mr. Lippert: Will you answer?

A. South of the line indicated.

Q. Will you indicate which direction is south on there? [726]

A. The bottom of the chart.

Mr. Lippert: No further questions.

Cross-Examination

Q. By Mr. Eastham: Lieutenant Hewins, what was the condition of the weather, as to fog or otherwise, prior to receiving word of this collision, as you observed it?

A. The condition varied prior to receiving that word from dense fog to fog of lessening density.

Q. You received word of the collision about 7:20. Going back to three-quarters of an hour before that, what would you say it was?

A. I would say visibility at that time in the harbor was probably 200 yards.

Q. You also said that you continued to sound the

(Deposition of Spencer F. Hewins.)

“Hermes’” fog signals until the visibility was one and a half to two miles, until you reached the scene of the wreck. What time was that, do you remember?

A. I am not sure that I know which time you are referring to. At the time I arrived—

Q. After you arrived, the fog cleared up until the visibility was one and a half to two miles, and I am asking you what time that was.

A. I still don’t remember the—

Q. You testified that you were out there the remainder of the day? [727] A. Yes, sir.

Q. Did you see any bodies?

A. I recovered a body later.

Q. Do you know whose body it was that you later recovered?

A. The master of the barge. Anderson, I believe his name was.

Mr. Adams: I don’t believe that was the name, Lieutenant. Is that the name you think it was of the party?

A. It was the master of the barge that we recovered.

Mr. Adams: He didn’t lose his life.

Lieutenant Bartlett: It was a man by the name of McGrath. He pronounced it “McGraw”, and it is spelled “M-c-G-r-a-t-h”.

Q. By Mr. Eastham: Did you ever recover the body of a young boy about 16 years old?

A. No.

Q. You said you sent your executive officer aboard the “Sakito Maru”? A. Yes, sir.

(Deposition of Spencer F. Hewins.)

Q. Did he examine the "Sakito Maru's" log?

A. He examined the log, yes.

Q. About what time of day was that, if you remember, approximately?

A. About 10 minutes after we got there, about 8:20.

Q. The log wasn't written up then as to the collision, [728] was it? A. Yes.

Q. It was all written up?

A. As I received the report, it was. I didn't see the log.

Mr. Eastham: That is all.

Cross-Examination

Q. By Mr. Clough: Lieutenant, these barges had been stationed in this locality for some months, had they not?

A. They had been out there for some time, more than a month, but just how long I don't know.

Q. What device, if any, is there to notify incoming mariners and captains of boats as to the locality of these fishing vessels?

A. Do I understand that question to mean some device apart from the fishing vessels?

Q. Is there anything that would communicate to an incoming boat the fact that there are fishing vessels located in this kelp bed? Do you see what I mean?

A. You mean a device on the incoming vessel, or a device on the fishing vessel, or a device—

Q. Is there any information which is relayed or

(Deposition of Spencer F. Hewins.)

forwarded to an incoming captain which would warn him of the fishing vessels being anchored there?

A. I don't remember seeing any in writing. There is a [729] comment in the Pilot regarding the large number of fishing vessels to be encountered in the entrance of the Strait of Juan de Fuca.

Q. Do you remember whether there is anything pertaining to fishing vessels in San Pedro harbor?

A. I have never seen it.

Q. Have you any way of ascertaining what the visibility was at the point of impact about 7:20 in the morning, from where you were?

A. I couldn't see them.

Q. It would be different from where you were stationed?

A. It could be identical, and it could be the direct opposite.

Q. When you did reach the scene of the impact of these two vessels what was the visibility then?

A. I would say about a half a mile. You gentlemen understand that conditions were changing rapidly at that time. The sun had attained a certain altitude, and it was getting lighter every minute, the fog was getting lighter.

Q. At the time of the impact would it be possible for the barge to have been pushed forward or backward from its location prior to the time of the impact?

Mr. Adams: May I have that question read again, please?

(Deposition of Spencer F. Hewins.)

(Question read by the reporter.)

A. Yes, it was possible for the barge to be moved by the force of the collision. [730]

Q. By Mr. Clough: How far would it be possible for the boat to be moved?

A. I can't answer that question. It would depend on the tonnage of the vessel, and the angle at which she struck the vessel at rest, the speed at which she was going, and the tonnage, size, depth of the vessel that was struck. It is absolutely impossible to answer that.

Mr. Adams: Mr. Clough, for your information, Lieutenant Hewins already testified as to how far he thought the "Olympic" was moved.

Mr. Clough: Did he so testify to that?

Mr. Adams: Yes.

Mr. Clough: How far did he say?

Mr. Adams: You can ask him that question again, but he testified as to how far he thought it was moved.

Q. By Mr. Clough: How far do you think the vessel was moved?

A. Between 150 and 200 feet.

Q. What direction would that be?

A. I would like to modify that previous answer too.

Q. All right.

A. She was about 150 to 200 feet from her previous position, that is, her position prior to the collision, when I located her on the bottom. She was

(Deposition of Spencer F. Hewins.)

headed about, roughly speaking, 45° . That would be caused by the anchor holding the bow, while the stern was moving and she was [731] swinging on an angle of about 45° . She filled up and went down—I understand she went down very rapidly, so it could be assumed that she rested on the bottom under the place where she was when she moved sidewise at the time of the collision.

Mr. Clough: I think that is all.

Cross-Examination

Q. By Mr. Briney: Assuming a ship following that 320° course from San Diego, if the ship master had decided to come on that course until he could take a 340° course to the lighthouse, he would determine that he had reached that point when a bearing by compass showed that he had reached a point where such a bearing would bear on the lighthouse, and then he would turn? He wouldn't go by soundings, in other words?

Mr. Adams: I object to the question on the ground that it assumes facts not in evidence, if the question deals with the course of the "Sakito Maru", inasmuch as the testimony clearly is that the "Sakito Maru" came on a course of 340° true, and inasmuch as the witness testified that vessels coming up the coast from the Canal Zone do not come up the coast on a 320° course, as those vessels come from San Diego here, but come up and approach Los Angeles harbor on a course of 340° true. Therefore I object to it as assuming facts not in evidence. [732]

(Deposition of Spencer F. Hewins.)

Mr. Briney: I will withdraw the question. You may strike all my remarks.

Mr. Adams: Does anybody else have any further questions on cross examination?

Cross-Examination

Q. By Mr. Montgomery: Has the wreck, to your knowledge, moved since it originally hit the bottom?

A. It has been leveled more or less, and parts of it have certainly moved. She was mined by the Army Engineers, by contract with the Army Engineers, so it would be safe for vessels to go over the top of it.

Q. Is there any wreck there today?

A. Oh, yes. She is an iron ship, and should be there for many, many years.

Q. She hasn't changed her position appreciably?

A. No, and she won't. She is sanded in there now.

Q. You spoke of coming upon the "Sakito Maru's" lifeboat about midway between the wreckage which was drifting about the scene of the collision and the "Sakito Maru". As to that wreckage, can you tell whether or not it was generally over the point where the "Olympic II" was submerged?

A. I would say the wreckage was west of the submerged position of the "Olympic".

Q. Can you say how far west? [733]

A. Well, it is spread over considerable area, a thousand yards, roughly.

Mr. Montgomery: That is all.

Mr. Bullard: I have one other question.

(Deposition of Spencer F. Hewins.)

Further Cross-Examination

Q. By Mr. Bullard: Directing your attention to the time you were taking the six point fix from the diver's barge, where was the mooring buoy that had marked the position of the stern line of the "Olympic"?

A. I was hanging on it. The "Hermes" was moored to it. I would say the compass bearing from the barge to the ship was about 120° , a little south of east.

Q. The "Hermes" was tied to the mooring?

A. Yes.

Q. And the barge was separate and some distance from it? A. Yes, sir.

Q. About how much distance separated the two?

A. These distances are very difficult from memory. I would say 600 yards. You see, that buoy had to be some distance off the stern of the "Olympic".

Q. That was the next thing I was about to ask. Had you observed from your prior observations what distance separated that buoy we have been talking about and the stern of the "Olympic"?

A. Yes, there was a considerable distance. It was [734] remarkable in that it was more than you would expect that distance to be. I would say it was 200 yards from the stern. Now then, that is assuming that the stern line had a strain on it and was pulled in from its anchor toward the ship.

Q. The position of that buoy didn't enter into the fix that you made, did it?

(Deposition of Spencer F. Hewins.)

A. Oh, no. I had left the ship.

Q. Nor would the position of the buoy from that of the diver's barge necessarily show how much the "Olympic" had been moved by the force of the collision?

A. No. That would be one way of determining it, and another would be—I see what you mean.

Q. Let me state the question in a different way. Can you determine approximately the distance the "Olympic" was moved by the force of the collision by correlating the point of location of the diver's barge, which you have testified was directly over the submerged wreck, and the buoy of the stern anchor?

A. No, for this reason. I was making a guess of 150 feet, roughly, but in making a guess of that sort, the force applied to move that vessel would vary so much—say it had moved it 50 feet, then it might take three times that force to move it 100 feet and ten times that force to move it 150 feet, and therefore any guess I would make would be so radically vague with respect to determining the force that it wouldn't be useful. [735]

Q. Was the buoy marking the stern anchor in the same position after the wreck as before the wreck?

A. I have never fixed that point so accurately as to be able to answer the question, either before or after.

Q. With reference to the position of the buoy

(Deposition of Spencer F. Hewins.)

and the wreck, you cannot state what distance the vessel was moved by the force of the collision?

A. No, I couldn't make that statement based on any knowledge which I have.

Mr. Bullard: That is all.

Mr. Adams: Does anybody else have any further cross examination?

Redirect Examination

Q. By Mr. Adams: After the wreck was the line from the stern of the barge still connected with the buoy? A. No.

Q. The buoy was floating free, then, except for the line which ran to her weight at the bottom?

A. Yes.

Q. The condition of the current and the wind might have some effect, then, upon the position of that buoy if that line was severed, might it not?

A. Within limits. In other words, I don't think the anchor would be moved by the force of the current and the wind. [736-7]

Q. Within the limits of the scope of the change?

A. Yes, depending on the scope.

Q. Lieutenant Hewins, you have commented upon the distance of visibility from time to time while you were aboard the "Hermes". From what position aboard the "Hermes" did you form these estimates of visibility? Where were you, in other words? A. I was on the bridge.

Q. That was true, was it, during the time that you were approaching the scene of the collision from Los Angeles harbor?

(Deposition of Spencer F. Hewins.)

A. Yes, sir. I didn't leave the bridge until noon.

Q. So all of your estimates were made and your testimony has been given with reference to the estimates made when you were on the bridge of the "Hermes"? A. Yes, sir.

Q. When you first arrived in the vicinity of the wreck were you able to distinguish through the fog the other two barges? Were they visible?

A. They were visible when I arrived at the scene of the wreck.

Q. Did the fog, while you remained at the scene of the wreck during that morning, ever become so dense that those other two barges were not visible?

A. No.

Q. Even though you could see the other two barges from [738] the time you arrived at the wreck, you continued to sound fog signals up to some later time, the exact time of which you can't remember; is that correct?

A. Yes. I sounded two blasts instead of one, showing that the vessel was stopped.

Q. Did you continue to give that signal that morning?

A. Yes. It was only a short time before it became clear enough to dispense with the fog signals, but I can't tell you how long it was, things were happening too fast.

Q. Lieutenant Hewins, can you tell us, if you recollect, the average number of vessels entering and leaving Los Angeles harbor southbound or bound to the south during the 24 hour period that you

(Deposition of Spencer F. Hewins.)

observed around the time of September 4, 1940?

A. Southbound?

Q. Either southbound or entering Los Angeles harbor from the south.

A. It varies different days, but I would say it wouldn't exceed three a day.

Q. That would be entering Los Angeles harbor from the south or leaving Los Angeles harbor for the south?

A. Yes, sir. Some days it would be quite large, and other days you might not have any.

Q. I should have perhaps asked you this question at the start of the deposition, to show where you will be at the time of the trial, which is set for September 16, 1941. [739] Do you expect to be in the region of Southern California on that day?

A. No, sir.

Q. Are you free to state where you expect to be?

A. I am sorry——

Mr. Bullard: I think if he says outside of the district, that would be sufficient.

A. I will be outside of the reach of the courts of this vicinity at that time. My destination is confidential.

Q. Is it fair to ask if you will be outside of the territorial boundaries of California?

A. Yes, sir, I will be outside those boundaries.

Q. So that we might cover the same point at this time, is that also true of Lieutenant Bartlett?

A. Yes, sir. The ship, the "Hermes", will be outside of those waters.

(Deposition of Spencer F. Hewins.)

Mr. Adams: I have no further questions.

Mr. Collins: I have just one or two other questions.

Recross Examination

Q. By Mr. Collins: You stated that the "Hermes" recovered a body, and Lieutenant Bartlett stated that it was Mr. McGrath. Do you recall when that body was recovered by the vessel?

Lieutenant Bartlett: It was longer than three weeks. The condition of the body was badly decomposed. [740]

Q. By Mr. Collins: Did you find papers on him by which you identified the body? A. Yes.

Q. And you identified him, as Lieutenant Bartlett said, as Mr. McGrath?

A. I would have to refresh my memory to tell you that. I am not sure, but I think it was McGrath.

Q. Is that the only body you recovered on the "Hermes"? A. Yes.

Mr. Collins: That is all.

Recross Examination

Q. By Mr. Bullard: You testified, Lieutenant, that around in the vicinity of September 4, 1940, there were about three vessels either coming in or going out southbound between Los Angeles and San Diego and points south.

Mr. Adams: That he observed.

A. My estimate is just as good for September

(Deposition of Spencer F. Hewins.)

4th as November 4th. I don't remember on that day particularly, but the average number of ships on that southerly run entering or leaving from the south is around three.

Q. What were your opportunities of observation around that time? Were you on 24 hour duty?

A. I might have been asleep, but they will call me for most anything.

Q. How would you determine that a particular vessel was [741] headed for San Diego or for the Canal?

A. From the direction in which it was going. Oh, I see.

Q. If you saw the stern of a vessel leaving Los Angeles harbor, how could you tell where it was going?

A. Ordinarily we would trail them almost to the point where they would change course for San Diego and keep them in view as we returned toward the harbor; we would later observe a change of course. Aside from that, we have means of knowing where they are bound.

Q. Other than speaking the vessels themselves?

A. Yes.

Q. What was the situation with reference to the incoming vessels? How could you tell where they were coming from?

A. We also have that information.

Q. Before you saw the vessel you had some information leading you to suspect the arrival of that vessel? A. Yes.

(Deposition of Spencer F. Hewins.)

Q. Of course, you can't tell by looking at a vessel coming from the south whether she is coming from San Diego or from Seattle?

A. No, you couldn't tell where her last point was from the way she happened to be heading in.

Q. Vessels approach Los Angeles harbor from all directions? A. Yes.

Q. They might be coming from Honolulu or Japan or [742] Catalina or Seattle?

A. Yes.

Q. Almost any of the points of the compass?

A. Yes.

Mr. Bullard: That is all.

Recross Examination

Q. By Mr. Clough: You say when a vessel is coming in the harbor from a point just opposite the "Olympic", where it was parked—what is its direction—342? A. 340 true.

Q. And when they are traveling in that direction how far away would they be from the "Olympic" tackle?

A. The distance would vary, as I said, depending on the accuracy of the navigator in carrying out his intention, which may or may not be 340, and hit the lighthouse on the head, but, as I say, the ones I observed the most of were bound in from the south and approaching the harbor.

Q. Then how far away do you observe them to be ordinarily, generally, from the "Olympic" place?

(Deposition of Spencer F. Hewins.)

A. Oh, from 300 to 1,000 yards west, sometimes more.

Q. And if a vessel comes to a point where it would be in direct contact with the "Olympic II", would you say it was traveling on a 340 true course?

A. Very, very close, yes.

Q. It would be very close? [743]

A. Yes.

Mr. Bullard: That is, coming from the south?

Mr. Clough: Yes, if the vessel were coming from the south. I think that is all.

Redirect Examination

Q. By Mr. Adams: Lieutenant Hewins, if six vessels started from down the coast at a fixed point, all at the same point, and all steered 340° true, when they arrived at Los Angeles harbor, still on that course, opposite where the barges were anchored, would they all arrive at the same fixed position?

Mr. Bullard: I object to the question as calling for the conclusion of the witness, and no proper foundation having been laid.

Mr. Adams: I think it is explanatory of the testimony before, and for that reason I ask the witness to give us the benefit of his knowledge on those matters?

A. If you set a rifle in a rest, you are going to have a dispersion of shot, and the vessels, in my opinion, would certainly not be at the same place, no, decidedly not.

(Deposition of Spencer F. Hewins.)

Q. And if a vessel started from a fixed position down the coast, northbound to Los Angeles harbor, on one day, and then started from that same position, let us say, the next day, would it arrive at exactly the same spot when it gets opposite Los Angeles harbor? [744]

A. For the same reasons, no.

Q. What are the reasons that explain that?

A. Just take one ship, for example, or different cargoes, and on different days he will be laden in different manners, so that he may be drawing more water aft than he is forward, or the variance would be different on different occasions; it might be light, and in that case the wind would carry him to a greater extent than if he was laden, and that varies with the degree of lightness or ladening of the vessel.

Q. It also varies from day to day, doesn't it?

A. Yes, sir. And also the condition of the bottom of the ship; he wouldn't go as fast as he thought he was going, or he wouldn't be going as fast as he had a month before, because there was more marine growth and barnacles on the bottom. The current of the sea would be different, the direction of the sea may be different, the direction and force of the wind would be different, and in the case of different vessels the differences would be more marked, because of different characteristics in the hulls of those vessels.

(Deposition of Spencer F. Hewins.)

Q. So that although there might be numerous vessels coming up the coast from the Canal, all steering 340° true, they are not going to end up opposite Los Angeles harbor at the same position, are they?

Mr. Bullard: I object to the question as leading and [745] suggestive, and calling for a conclusion of the witness, and no proper foundation has been laid.

Mr. Lippert: You mean necessarily, don't you?

Q. By Mr. Adams: Yes, they are not necessarily going to end up in the same position opposite Los Angeles harbor, are they? A. No.

Q. Now, that would be especially true, would it not, if the vessel for the last six hours prior to its approach to Los Angeles harbor had navigated by dead reckoning?

Mr. Bullard: The same objection.

A. They wouldn't arrive at the same point.

Q. By Mr. Adams: Assuming a vessel had her last landfall, or took her last bearing, at least, somewhere around midnight, and proceeded up toward Los Angeles harbor on a course of 340° true, if she collided with the "Olympic II" that would be pretty good dead reckoning navigation, wouldn't it?

Mr. Clough: That is objected to as calling for a conclusion of the witness.

Mr. Bullard: I wish to express the same objection as that last set forth in detail.

Mr. Eastham: I join in both objections.

(Deposition of Spencer F. Hewins.)

Mr. Collins: And there is no showing as to the point at which the 12:00 o'clock bearing was taken.

Mr. Adams: I know it. I can't remember what that was, [746] but I will find out in a minute.

A. I don't feel qualified to state where he would arrive from dead reckoning navigation. "Dead reckoning" is "deduced"; it comes from "deduced", "d-e-d", and, speaking of "dead reckoning", it was later misspelled "dead"—it might have been misspelled.

Mr. Adams: I won't pursue that line of interro-gation, in view of the fact that it might be outside the scope. That is all I have.

Recross Examination

Q. By Mr. Bullard: With reference to this course of 340° true, that will vary somewhat, will it not, depending upon the last point of departure which is taken?

A. Yes, sir. He may, or any incoming vessel may find himself, in his first landfall, his first fix that he is able to take would put him in a position where 340 wouldn't take him into the harbor, and under those circumstances he certainly wouldn't steer it.

Mr. Adams: That is all.

(Signature of the foregoing deposition waived by the witness and by respective coun-sel.) [747]

DAVID H. BARTLETT,

called as a witness in behalf of Respondent-Claimant-Petitioner and Cross-Libelant Nippon Yusen Kabushiki Kaisya, being first duly sworn, testified as follows:

Direct Examination

Q. By Mr. Adams: Will you kindly give your full name, Lieutenant Bartlett?

A. Lieutenant David H. Bartlett.

Q. You reside in San Pedro?

A. San Pedro.

Q. And you are connected with the United States Coast Guard Service? A. I am.

Q. What is your present station or duty?

A. Executive officer of the Coast Guard cutter "Hermes", at San Pedro.

Q. How long have you occupied that position?

A. I have occupied that position since August 20th.

Q. 1940? A. 1940.

Q. You were serving in that capacity, were you, on September 4, 1940? A. I was.

Q. How long have you been in the Coast Guard Service?

A. I entered the Coast Guard Academy in August of 1929 [748] as a cadet, and graduated on the 15th of May, 1933, as an ensign.

Q. Have you been in the service continuously since your graduation? A. I have.

Q. Since your graduation have you served aboard Coast Guard vessels at sea? A. I have.

(Deposition of David H. Bartlett.)

Q. Lieutenant Bartlett, do you recall the day of September 4, 1940, and the fact that a collision occurred on that day between the "Sakito Maru" and the "Olympic II"? A. I do.

Q. In the interest of saving time, I would like to ask you to narrate the circumstances of that event and the "Hermes" proceeding to the scene of the wreck, from the time that the "Hermes" first received notice that there was a collision. Can you give us a narration of those events?

A. I will. As near as I can remember, on the morning of the 4th of September, 1940, I was officer of the deck on the 4 to 8 watch in the morning. About 7:20 the fog had come in fairly thick, with a visibility of about 2, which would mean about 500 yards. The "Hermes" was moored at the Coast Guard buoy in the outer harbor west of Los Angeles breakwater light. At that time we received word that the fishing barge had been rammed and sunk, and proceeded to get under way and feel our way out of the harbor. At 7:30 we [749] were under way, threading our way through small fishing vessels and anchored merchant vessels, and at 7:52 passed Los Angeles breakwater light, and set the course at 162°, gyro compass, full speed, sounding fog signal. As we passed the breakwater light the commanding officer relieved me and instructed me to prepare a lifeboat for lowering at the scene of the collision. At 8:14, approximately 8:10, we arrived at the scene of the wreck, at which I noticed

(Deposition of David H. Bartlett.)

considerable boxes, an overturned lifeboat, broken planks strewn on the water. I also noticed a ship's lifeboat fully manned skirting the wreckage due south of us. A merchant vessel was on our starboard bow, which we had followed out of the harbor, just heading south, on our port hand, and an anchored fish barge was on our port beam. Midway between this fish barge and the merchant vessel under way was another large merchant vessel anchored. I was ordered to proceed to the identified Japanese merchant vessel "Sakito Maru" and board that vessel, which I did. After leaving Los Angeles breakwater light and leaving the bridge and going down on deck of the "Hermes", I noticed that the fog was in layers. By this I mean horizontal layers with the water, the lightest being near the surface, very thick about the level of the bridge of the "Hermes". As we continued out on the course the fog lightened until we reached the wreck, where it was a continual haze. The fog later lifted, and about 10:00 o'clock it turned out to be a [750] clear sunshiny day.

Q. Does that about cover it, Lieutenant?

A. That about covers it.

Q. About how high above the surface of the water was the bridge of the "Hermes" on that particular day, that morning?

A. Approximately 20 feet.

Q. About how high above the surface of the water was the deck of the "Hermes" on which you stood that morning?

(Deposition of David H. Bartlett.)

A. My position in the waist would be about 7 feet, from the level of the water to the level of the deck, and then my height placed it just 12 feet.

Q. As the "Hermes" was proceeding out toward the wreck, did you have occasion to leave your position on the deck and go up to the bridge?

A. I walked up toward the bridge.

Q. Did you ever get as high as the bridge?

A. I was on the bridge when we left the harbor.

Q. When you first went down on the deck did you notice that visibility was greater when you reached that level than it was when you were on the bridge?

A. It seemed to be less.

Q. As you approached—

Mr. Bullard: Just a moment. I move that the answer be stricken as not responsive. I believe if you will have the answer read back, you will see that. [751]

Mr. Adams: Read the question and answer, please.

(Record read by the reporter.)

Q. By Mr. Adams: Did you mean visibility was less, or that the fog—

A. I mean in that—I mean it seemed to be greater.

Q. In other words, the fog seemed to be less and visibility seemed to be greater?

A. There seemed to be less fog down there, and you could distinguish a hull underneath this layer

(Deposition of David H. Bartlett.)
of fog, but you couldn't distinguish the characteristics of the vessel.

Q. Did that condition continue constantly until you arrived at the scene of the wreck, or was there some variation of that from time to time?

A. As we proceeded, continued out toward the wreck, the condition got better. In other words, the fog was lifting. And also, as the Captain testified, the sun was getting to a higher angle, and visibility was increasing.

Q. I take it that when you arrived at the scene of the wreck you saw one of the lifeboats manned by a Japanese crew? A. I did.

Q. Did you observe that lifeboat again after you had gone aboard the "Sakito Maru" and returned to the "Hermes"? A. Yes, I did.

Q. Where was the lifeboat at that time?

A. The lifeboat had come along the port side of the "Sakito Maru". [752]

Q. Did you see more than one lifeboat from the "Sakito Maru" any time you were out there?

A. As I remember, there was another lifeboat lowered on the starboard side of the "Sakito Maru", and was tied along in the waist of that vessel, alongside.

Q. What was the lifeboat of the "Sakito Maru" doing when you first observed her, when you first arrived?

A. There was a man standing in the bow of the lifeboat, and the bow was pointed into the accumu-

(Deposition of David H. Bartlett.)

lated wreckage, and he had a boat hook, and he was peering into the wreckage, as was the officer in charge of the boat, searching it.

Q. Did that wreckage consist, among other things, of an overturned lifeboat which was presumably from the barge "Olympic"?

Mr. Bullard: Is it necessary to lead the witness along this line, Mr. Adams?

Mr. Adams: He just a few moments ago, in your presence, related these matters. I mean, this is no surprise to Mr. Bullard, because he heard the same thing before.

Mr. Bullard: I am not surprised by the testimony. I am surprised by the form of the question.

Mr. Adams: You just heard the witness, before we started taking the deposition, say the same thing.

Q. By Mr. Adams: Tell us, if you can, Lieutenant Bartlett, about any lifeboat that you saw afloat there, other than one from the "Sakito Maru". [753]

A. I saw a lifeboat overturned in the wreckage. There was floating next to it a green box approximately 4 feet high and 2 feet wide and about 5 or 6 feet long.

Q. Was the lifeboat from the "Sakito Maru" in the vicinity of those objects you have just described?

A. It was, when my boat's crew and I passed that wreckage.

(Deposition of David H. Bartlett.)

Q. Was that part of the wreckage that they were probing at the time you arrived?

A. That is what they seemed to be doing, yes.

Q. As you neared the scene of the wreck did you have occasion to go on the bridge, or did you remain on the deck of the "Hermes"?

A. I walked up toward the bridge and received orders from the commanding officer, who came out on the wing of the bridge. He passed orders to me to lower a boat and proceed to the "Sakito Maru" and board that vessel.

Q. From your position on the deck of the "Hermes" as you left Los Angeles harbor and approached the scene of the wreck, what do you estimate visibility was, or did it vary from time to time?

A. As we left the harbor, as I stated, the visibility was about 2, or 500 yards.

Q. Was that from the bridge, Lieutenant Bartlett, or from the deck of the "Hermes"?

A. That was from the bridge. Then as we continued [754] away from the harbor light the fog was thinning out and lifting on the water.

Q. And I suppose the visibility continued to increase?

A. The visibility continued to increase as we continued from the breakwater on that course.

Q. When you first went down on deck did you form any estimate of what the visibility was at that time? A. From the deck?

Q. From the deck.

(Deposition of David H. Bartlett.)

A. Visibility was greater than it was on the bridge.

Q. Do you know what distance you could see?

A. I should judge from the deck you could see a mile.

Q. By the time you got to the wreck how far do you think you could see from the deck of the "Hermes"?

A. When we got to the wreck you could see up to a mile and a half to two miles.

Q. Do you know how long the "Hermes" continued to sound fog signals after arriving at the scene of the wreck?

A. At 7:52 we left the lighthouse, the Los Angeles harbor breakwater lighthouse abeam to starboard, and at that time I was relieved of the deck, and from that time on I was busy preparing the boat to be lowered, lowering the boat, and following out my orders, and did not return to the "Hermes" until about 11:30 or 12:00 o'clock.

Q. What do you mean, you didn't return to the "Hermes"?

A. I was on board the "Sakito Maru". [755]

Q. Oh, I see. Do you recall that you heard the fog signals of the "Hermes" while you were aboard the "Sakito Maru"?

A. I was inside the "Sakito Maru", was in a closed compartment, in the internal part of the ship.

Q. You don't have any idea, then, when the

(Deposition of David H. Bartlett.)

“Hermes” might have stopped sounding fog signals?

A. No, I do not. I would have to refer to the log book.

Q. Do I understand that you remained aboard the “Sakito Maru” until about 11:30?

A. I think it was about that time. I had a pulling boat, and it takes considerable time, it took considerable time to go from the wreckage to the “Sakito Maru”, as the swell was running, and when we got alongside her lowered gangway on the starboard side we encountered difficulty in getting an interpreter on the Japanese vessel, and the ceremony of making myself known, as to what I wanted, took up considerable time, so that I judge I was on the “Sakito Maru” from about 9:00 o’clock until 11:00.

Q. Do you know when the lifeboat of the “Sakito Maru” returned to the “Sakito Maru” and was raised out of the water? Did you happen to observe that?

A. As I was going to the “Sakito Maru” her lifeboat was pulling toward the port side of that vessel, and when I got on her port side her lifeboat was alongside, receiving instructions from an officer on her deck. [756]

Q. Do I understand that was about 9:00 o’clock?

A. Around that time.

Mr. Adams: No further questions.

(Deposition of David H. Bartlett.)

Cross-Examination

Q. By Mr. Bullard: Were you charged with any duty or responsibility with reference to observing weather conditions, in your capacity as officer of the deck on that day? A. Yes.

Q. And the observations which you made and which you have described were made in that connection? A. They were.

Q. Did you observe the thickness of the second layer of heavy fog which supervened over the layer of light fog nearest the water?

A. In that condition, when you are under a fog bank, you cannot see the upper layer of fog, as the thickest effect is near the surface, and you cannot penetrate that to determine how many layers are above it. All I could determine was that the fog had lifted from the water, and that you could see underneath that.

Q. But you couldn't tell us the thickness of the layer above that?

A. I couldn't tell you the thickness of the layer above that. It might have been 300 feet or it might have been 50 [757] feet or it might have been 500 feet.

Q. I thought there was a possibility that you might have observed a cross section of it on some other object which would give some information on that.

A. I can give you some information on that. As we left the harbor, the lighthouse on the end of the breakwater, the base was more distinct than the

(Deposition of David H. Bartlett.)

lantern. In other words, I could see the details of the base of the lighthouse, where I couldn't make out the details of the top of the light or the lantern.

Q. I understand that you are not at liberty to relate any of the occurrences transpiring after you boarded the "Sakito Maru". Is that correct?

A. That is correct.

Mr. Bullard: I have no further questions.

Mr. Collins: I just have a few.

Cross-Examination

Q. By Mr. Collins: As I understand the several answers, after you arrived at the scene of the wreckage you picked up a body; is that correct?

A. That is correct.

Q. Where was that body recovered?

A. That body was recovered about one and a half miles west from Los Angeles breakwater light, approximately 1,000 yards to one mile off the breakwater. [758]

Q. Were you able to make any identification of the body?

A. The body was badly decomposed and I couldn't make any identification, other than that it was a male, a man, about—there was no way that I could tell the age. He was full grown.

Q. How was he dressed?

A. He had on a pair of blue trousers, dungarees, and he had heavy brown Army shoes, and had a light, faded, as I recall, khaki shirt.

Q. Did you find any papers in the pockets of

(Deposition of David H. Bartlett.)

his clothes? A. I did not search the body.

Q. What did you do with the body after you found it?

A. Lowered a bunk over the side and maneuvered the body with a boat hook into the bunk, and hoisted the bunk and body about 3 feet off the water, up the side of the ship, and covered it with a tarpaulin. Then I went on the bridge to take over the deck.

Q. Did you deliver the body to someone on board?

A. We proceeded with the body to San Pedro group dock, and the body was then turned over to the police, who took it in custody.

Q. Where was that done?

A. At San Pedro group dock, in Watchorn Basin.

Mr. Collins: I have no further questions. [759]

Cross-Examination

Q. By Mr. Eastham: Can you tell whether the body you just mentioned was that of a boy about 16 years?

A. Yes. I could tell he was a grown man.

Q. He wasn't a boy?

A. No, he wasn't a boy.

Mr. Eastham: That is all.

Cross-Examination

(Continued)

Q. By Mr. Collins: Did anyone tell you later what this man's name was? There has been some

(Deposition of David H. Bartlett.)

talk today of a man by the name of McGrath. You said something about a man by the name of McGrath, and I was wondering how you came to understand that.

A. I read in the San Pedro Pilot that the body recovered by the Coast Guard cutter "Hermes" was identified, I believe, as McGrath. Other than that, I have no definite information.

Mr. Collins: That is all.

Mr. Clough: That is all.

Mr. Adams: Anything further? I believe that is all, Lieutenant Bartlett.

(Signature of the foregoing deposition waived by the witness and by respective counsel.)

(It is stipulated by counsel and the witnesses named in the within transcript that signature of the depositions by the deponents is waived.) [760]

Mr. Cluff: With the exhibits?

Mr. Adams: With the exhibits. I also at this time offer the deposition of Mr. H. Moynahan, together with the exhibits attached.

Mr. Montgomery: I want to make an objection to the offer of the Moynahan deposition as being 90 per cent hearsay; irrelevant, incompetent and immaterial; and not binding in any way upon the interveners represented by me, and not bearing upon any of the issues of the case.

The Court: I am going to take it for what it is worth. I think I can judge what will have weight with me, and it will be a part of the record. [760a]

SAKITO EXHIBIT No. H

DEPOSITION OF PHILIP J. MOYNAHAN

Deposition of Philip J. Moynahan on behalf of Respondent-Claimant-Petitioner and Cross-Libelant Nippon Yusen Kabushiki Kaisya, before Doris B. van Aller, as Commissioner, in and for the County of Mobile, State of Alabama, in the offices of Messrs. Pillans, Cowley and Gresham, Suite 510 Van Antwerp Building, Mobile, Alabama, on the 10th day of September, 1941, at 10:00 o'clock in the forenoon.

The witness, Philip J. Moynahan, named in the attached notices, being by me first on oath duly sworn to speak the truth, the whole truth and nothing but the truth, did depose as follows:

Direct Examination

By Mr. Pillans:

- Q. What is your name, please?
- A. Philip Joseph Moynahan.
- Q. Are you in service of the United States?
- A. Yes sir. Warrant Officer, U. S. Coast Guard.
- Q. Where are you now stationed?
- A. Mobile Base, Mobile, Alabama.
- Q. What is your age?

(Deposition of Philip J. Moynahan.)

A. Thirty-nine years. [761]

Q. How long have you been going to sea?

A. Approximately twenty years.

Q. How long have you been in the Coast Guard?

A. Sixteen years.

Q. During this period when you have been in the Coast Guard of the United States, have you been stationed on the west coast in the Los Angeles area?

A. Yes.

Q. Were you so stationed in the summer and fall of 1940? A. Yes.

Q. Where were you based then?

A. I was stationed on the U. S. S. "Hermes" Coast Guard.

Q. Where was the "Hermes" based at that time?

A. At Los Angeles, or San Pedro, the harbor for Los Angeles.

Q. Do you remember the fact of a collision between the Japanese steamship "Sakito Maru" and a pleasure or fishing barge known as the "Olympic II," said to have occurred September 4, 1940?

A. Yes.

Q. Were you on the "Hermes" then as boatswain?

A. As Communication and Ordnance Officer, and also was performing duties of Boarding and Watch Officer. [762]

Q. What was the first knowledge that you had of the fact of the collision?

A. A dispatch received on board the "Hermes" at approximately 7:15 in the morning.

(Deposition of Philip J. Moynahan.)

Q. Was this a radio or wireless dispatch?

A. A radio.

Q. Where was the "Hermes" at that time?

A. Just inside of Los Angeles harbor breakwater.

Q. Mr. Moynahan, I exhibit to you U. S. Coast and Geodetic Survey Chart No. 5143, which was published January 1936, reissued June, 1939, and corrected to July 2, 1941. Please examine that and indicate with a penciled mark the place where the "Hermes" was at the time this message was received.

(The witness did this.)

Q. You have so indicated by writing in pencil the name of the "Hermes" just inside the breakwater and just west of the breakwater light—about 400 yards off. This, you say, was about 7:15 in the morning? A. Yes.

Q. After you received this dispatch, what did you do?

A. We prepared to get under way, and did so in the next ten minutes. [763]

Q. What were the weather conditions at that time?

A. Calm and the visibility was poor. There was fog and we were unable to see in the harbor over a quarter of a mile. The fog signal was operating on the breakwater light.

Q. As you proceeded toward the place of col-

(Deposition of Philip J. Moynahan.)

lision, did the fog increase, lessen, or remain substantially the same?

A. There became less fog and visibility increased slightly.

Q. Are you able to state approximately at what time you left the harbor?

A. Approximately 7:30.

Q. Are you able to state approximately at what time you arrived at the place of collision?

A. Five or ten minutes after eight.

Q. How long had you, at that time, been stationed at the Los Angeles base?

A. About ten months.

Q. During that time, had you been constantly in and out of the harbor and over the surrounding sea surface? A. Yes.

Q. Were you familiar with the vicinity and those vessels anchored in the vicinity? [764]

A. Yes.

Q. Were you familiar with the barge "Olympic II"? A. Yes.

Q. And with the place where she was anchored?

A. Yes.

Q. Was she already anchored there when you joined the "Hermes"? A. No sir.

Q. Do you know when she was anchored there?

A. Sometime in May.

Q. Of what year? A. 1940.

Q. I note on this chart that there is a circle, having opposite it the printed word, "wreck". Do you know what that is the wreck of?

(Deposition of Philip J. Moynahan.)

A. Yes. Of the barge "Olympic II".

Q. What relation does that circle bear to the position that the "Olympic II" occupied before she sank?

A. I would say 100 yards northwest, due to the fact that the "Olympic II" was pushed some distance by the "Sakito Maru" before sinking, according to the statement of the Master of the barge, "Point Loma", made to me shortly after the accident, while we were searching in the vicinity of the wreck. [765]

Q. Where were you stationed on your ship during your passage out from the harbor to the scene of the wreck?

A. I was on deck, preparing two boats for lowering away.

Q. You did not go up to the bridge?

A. I may have gone up there, but didn't stay any length of time.

Q. Your duties were on deck?

A. Yes. I went up to the bridge, possibly two or three times, but did not stay there any length of time.

Q. During the time you were on that Los Angeles station, did you see, from day to day, ships coming into and going out of the harbor and the courses these ships took? A. Yes.

Q. Were you familiar with sea lanes into and out of San Pedro or the Los Angeles harbor?

A. Yes.

(Deposition of Philip J. Moynahan.)

Q. I wish you would state whether the position of the "Olympic II", as indicated on that chart, was in or out of any of the sea lanes?

A. I would say just outside of the main sea lane of that course usually taken by ships leaving Los Angeles on a southerly course for the Canal Zone and other points South. [766]

Q. Would that be equally true if the vessels were bound in, from the opposite direction?

A. Yes, it would simply mean that they were coming in on a reverse course.

Q. Speaking from your twenty years experience at sea, and your knowledge of conditions in that harbor, and in and out of it, please state, in your opinion, if it was dangerously close or a safe distance away? A. Dangerously close.

Q. Please, with a pencil indicate upon the said chart the position occupied by the "Olympic II" prior to the collision.

(The witness does so.)

Q. You have made upon the chart a pencil mark, by which you have written the words "Olympic II". Did you see the barge "Olympic II" daily, or at almost daily intervals, from the time of her mooring until time of the collision?

A. I wouldn't say daily, as we were operating on patrols which were ten days out and ten days in. We also at times took long trips away from Los Angeles. [767]

Q. Frequently?

A. Yes, frequently.

(Deposition of Philip J. Moynahan.)

Q. Was she in the same place throughout that period? A. Yes.

Q. How was her mooring?

A. Fore and aft.

Q. By that phrase, do you intend that she anchored at bow and stern to hold her rigidly in place?

A. Yes.

Q. So she could not swing with the wind and tide? A. Yes.

Q. Does the length of pencil dash you have put upon chart to indicate the place of "Olympic II" before the collision, lie with its length fore and aft the same way the barge lay?

A. As near as I can remember.

Q. Is it substantially accurate? A. Yes.

Q. So that she lay dangerously near the steamer lane, she was also approximately athwart-ship to the course of steamers, not lying parallel to that course? A. Yes.

Q. Were there other barges of the same type anchored in the same fashion, in that vicinity? [768]

A. In the near vicinity.

Q. Do you remember their names?

A. "Point Loma" and the "Samar".

Q. Will you indicate on the chart the approximate positions at which they were anchored?

(The witness does this.)

Q. You have made upon the chart penciled dashes of the same type that represent the "Olym-

(Deposition of Philip J. Moynahan.)

pic II", and have written in pencil the respective names of the barges. With them drawn, as I understand you, there is shown the approximate location, roughly in a line, of the three barges as they were anchored immediately prior to the collision?

A. Yes.

Q. Please produce this chart that you have been testifying about, and have made memoranda on, to the commissioner to be attached to your testimony as Exhibit A thereto. A. I do this.

Q. I understood you to say, Mr. Moynahan, that the "Olympic II" was anchored in place in the same fashion in May and stayed so anchored in the same place until the collision? [769] A. Yes.

Q. Do you know about when the other two barges were anchored?

A. I don't remember exactly. I believe that both the "Samar" and "Point Loma" were anchored in their positions prior to the time the "Olympic II" anchored in hers.

Q. It was about the same time?

A. It may have been a month before or two weeks before. It was approximately the same time. One of them was anchored in her position from early in the fishing season, but I don't remember which one.

Q. When does fishing season begin?

A. In the early Spring.

Q. So that, beginning in the early Spring and running down to the time of collision, those barges

(Deposition of Philip J. Moynahan.)

were anchored fore and aft in the same place and the same fashion as you have testified?

A. Yes.

Q. Please state whether or not, in your capacity as Boarding Officer, you went upon the barge "Olympic II" between time of her anchoring in May and time of collision? [770]

A. Yes, I and Ensign B. D. Shoemaker, Jr. boarded the "Olympic II", the "Point Loma" and the "Samar" sometime in the latter part of May or the early part of June. I don't remember the exact dates.

Q. In 1940? A. Yes.

Q. Let's confine ourselves now to the "Olympic II". When you and Mr. Shoemaker went aboard the "Olympic II", did you have any talk with anybody? A. Yes.

Q. With whom? A. The person in charge.

Q. If it had been a navigating ship, you would call him the Master? A. Yes.

Q. Who did the talking, you or Mr. Shoemaker?

A. Both of us.

Q. Please state as nearly as you can what was said by the boarding party, you and Mr. Shoemaker to the Master, and what he said in reply. State it substantially as accurately as you can.

A. We made our boarding in a routine manner, inspecting all equipment etc. and in the course of our conversation with the person in charge, informed him that [771] we thought that they were anchored in a very dangerous place.

(Deposition of Philip J. Moynahan.)

Q. Was any reply made by the Master?

A. He replied that he had, of course, nothing to do with that; he was only acting for the owner. He gave us the name and address of the owner. I don't remember anything more.

Q. This person in charge, or Master that you talked with on the "Olympic II": Did he have a Master Mariner's license?

A. He had sufficient license to enable him to be Master of that barge.

Q. Was he licensed by authority of the United States?

A. Yes. Steamboat Inspection Service.

Q. Mr. Moynahan, you are a navigator?

A. Yes.

Q. You have to be to hold your job?

A. Yes sir.

Q. Are you familiar, as a navigator, with compass courses? A. Yes.

Q. Courses that vessels steer entering and departing from the harbor of Los Angeles and San Pedro?

A. Yes. Naturally we would plot our course every time, unless it was a course over which we had run many times. [772]

Q. Did you know, when you were out there, what course vessels bound for the Panama Canal or the West coast of South America normally adopted?

A. The course would be 160 degrees true.

Q. And coming up would be the reverse of that?

(Deposition of Philip J. Moynahan.)

A. Yes, or 340 degrees true.

Q. Let us take up your boarding of the "Point Loma", the closest barge to the "Olympic II".

A. Yes.

Q. You boarded the "Point Loma" on the same boarding trip? A. Yes sir.

Q. That was still you and Mr. Shoemaker?

A. Yes.

Q. What happened on the "Point Loma"?

A. We went through the same procedure that we always do in boarding, inspecting equipment etc.

Q. Did you talk with the man in charge of the "Point Loma"?

A. The person in charge made the statement that he did not see why the Coast Guard had to be boarding him continuously looking for violations of the law, and informed us we "already had ours", but he had a living to make. That was substantially what he said, or words to that effect.

Q. Was that in response to something you gentlemen said to him, and if so, what? [773]

A. No. Nothing at all. We asked for his papers to examine them, and he said this in the course of our inspecting the equipment, etc.

Q. Did you have any talk with the "Point Loma's" Master about whether there was or was not any danger in the location in which he was anchored?

A. Both I and Ensign Shoemaker informed him we thought he was also anchored in a dangerous place.

(Deposition of Philip J. Moynahan.)

Q. Was it in response to this that he made the statement you have just recited?

A. It may have been. I do not remember exactly.

Q. Then you boarded the "Samar"?

A. Yes sir.

Q. Did you have any talk with her Master along the same lines, and among other things about the danger of her place of anchorage? A. Yes.

Q. Was there any response made to that, as to the "Samar"?

A. I don't remember. I do not believe so.

Q. Getting back to the place of collision, when you arrived there, on morning of collision, were there any boats in the water when you got there?

A. Yes. Two small fishing boats, searching among the debris and wreck left from the "Olympic II". Also [774] the lifeboat from the "Sakito Maru".

Q. Did you see the "Sakito Maru" at that time?

A. Yes.

Q. Was she in motion or anchored?

A. Anchored.

Q. What position did she bear with reference to the wreckage of the "Olympic II"?

A. Southeast, approximately one thousand yards from the wreckage amongst which I was searching.

Q. At the time you got there and began searching among the wreckage and saw the "Sakito Maru" and other boats, what were the conditions of visibility? A. Slightly more than a mile.

Q. When you got up to the wreckage and began

(Deposition of Philip J. Moynahan.)

searching, was that done from the cutter alone or by putting out small boats?

A. I did that with a small boat. I went in No. 1 lifeboat, in charge.

Q. You went over in your little boat and joined the other three vessels searching for survivors through the wreckage? A. Yes. [775]

Q. Did you have any talk with any people in the other little boats while searching?

A. Yes, with operators of the two small American Power Fishing Boats.

Q. Did either of them say anything to you with reference to weather conditions immediately preceding the accident, as observed by them?

A. Calm and foggy and visibility approximately one-half mile.

Q. Where were these two fishing boats at moment of collision?

A. Fishing about one-half mile southeast of the "Olympic II".

Q. That was what they told you? A. Yes.

Q. Were they able, from where they were, to see the "Olympic II"?

A. They stated they were not.

Q. Could they hear any signal from the "Olympic II"?

A. Could hear the fog bell very faintly.

Q. Did they see a steamship pass bound in shortly before the collision? A. Yes.

(Deposition of Philip J. Moynahan.)

Q. That turned out to be the "Sakito Maru"? [776]

A. Yes.

Q. Did they say whether or not she was sounding her fog signal? A. That she was.

Q. Proceeding at high or low speed or how?

A. Very slowly, according to their statement.

Q. Then they heard the collision and hurried to the scene of the wreck themselves?

A. Yes. They heard when she struck, sound signals made, and other hullabaloo, and then they proceeded up to the scene of the wreck to see what was happening and help if they could.

Q. While you and these other boats were searching the wreckage was when you had conversation with the two fishermen? A. Yes.

Q. Do you know their names or who they were?

A. I don't remember.

Q. Were they pleasure fishermen or professionals?

A. As I remember, one was a commercial fisherman and one fishing for pleasure. I took their names and addresses at the time and reported these to Lt. Hewins, together with a memorandum of what they had said.

PHILIP J. MOYNAHAN

[Endorsed]: Filed Sep. 13, 1941. [777]

SI COAST

The side limits of the improvement are to be placed in or alongside the channel, or in a depth greater than the project limit is given, shallowing, particularly at the edges. It must be clearly stated elsewhere throughout the entry as to the date of the commencement and

ANDREW

Impressed Chromium
CAUTION
The side limits of the improvement are such that the rolling depth through the channel, or on alongside the channel, must be greater than the project depth of groove, i.e., particularly at the edges. It must not be permitted extruded throughout the entire width of the channel, as the pressure will then be decreased in places across the







Mr. Cluff: I think we can specify the objections, and file them in the case.

Mr. Adams: There is one feature about filing objections at a much later stage, after the evidence has been closed. I feel that Mr. Cluff perhaps has not appreciated this situation, that if certain evidence is ruled out in a deposition of one witness because of some objections, that might be overcome by the testimony of another witness, which we could, of course, obtain, or make an effort to do so, which I am in no position now to do.

The Court: I am not going to sustain many objections. [780] I am going to read these, and so far as the Court is concerned, he has read them, and you can't strike them from the Court's mind entirely, but it is true, as stated by Judge Montgomery, that any statements that Moynahan may have made to somebody on board the "Olympic", or one of the other barges, would not be binding on his client.

Mr. Adams: They are certainly binding upon everybody concerned with reference to the issue as to who was at fault for this collision. If that evidence proves that Hermosa was at fault, as a consequence of that, it is binding.

The Court: I know, but until we have heard all the evidence and you people have had an opportunity to brief it, we are not going to pass upon the question of fault. Hermosa may be entirely at fault, and it may be only partially at fault, and the same might be true with the "Sakito Maru". You gentlemen in your pre-trial briefs have been kind enough to give me the major and minor fault

rules; that will have to be considered, as the fault develops, as to what categories they fall into.

Mr. Montgomery: There is another consideration too, your Honor. The "Sakito Maru's" counsel has argued that the doctrine of contributory negligence applies. That does not apply, so far as the intervenor is concerned. It would merely be a matter between them and other boats.

The Court: I think it might apply to somebody employed on the boat, who had knowledge. You can't seriously contend [781] that it would apply to these poor people, for instance, the passengers that landed on that boat five minutes before the accident.

Mr. Adams: I grant you the question of proof would certainly be difficult in that case, but I think Judge Montgomery is in a worse position perhaps than other libelants to make an objection on this score, because Mr. Karsh was on the barge continually, and was certainly acquainted with the condition of the barge, having been on her for three or four months.

The Court: I am going to listen to the issue of contributory negligence when evidence on that is presented. I presume the same rule is true that the burden of proof is upon the one that alleges it.

Mr. Adams: I don't wish to make any firm commitment on that, but I think your Honor is right; I think the burden is on us.

The Court: We will take an adjournment until 2 o'clock.

(Adjournment until 2 o'clock p. m. of the same day.) [782]

Los Angeles, California
Thursday, September 18
2:00 a. m.

Afternoon Session

Mr. Adams: If the court please, I have in my possession a letter that I spoke of this morning, from Captain Fisher, supervising inspector of the seventh district of the Bureau of Marine Inspection & Navigation. I would like to ask Mr. Cluff if this letter may be introduced along with the other letters on this subject?

Mr. Cluff: I will stipulate that Captain Fisher wrote the letter. Do you propose, as you suggested this morning, to follow this up with the deposition?

Mr. Adams: If there is any dispute on this point to the effect that Captain Fisher did not relax that order, then I intend to follow it up with the deposition.

The Court: In the first place, I assume that there will be made available to the court the rules and regulations of the department, upon which these instructions were given. For instance, the mere sending out of a memorandum requiring them to do certain things, unless there was authority by law or some rule, it would not be binding.

Mr. Adams: I think the court can take judicial notice of this, just like he can of the regulations of a statute.

The Court: I don't have them in my library.

Mr. Adams: We will give you citations on that, and I think some of the regulations are in pamphlet form, that we [783] can offer to the court. I don't

think it is necessary to offer them in evidence.

(Discussion relative to case pending before Judge Beaumont omitted from the transcript.)

The Clerk: This will be "Sakito" Exhibit I.

SAKITO EXHIBIT No. I

J In Reply Refer to File No. 7711
DEPARTMENT OF COMMERCE
Bureau of
Marine Inspection and Navigation
Office of Supervising Inspector
514 Customhouse,
San Francisco, Calif.

September 17, 1941.

Lillick, Olson, Geary and Charles,

Attorneys,

311 California Street,

San Francisco, California.

Dear Sirs:

In response to your request, I have searched my file of the barge Olympic II and I do not find any record of a relaxation of any of the requirements for that barge which were promulgated in June, 1940. I have no recollection of granting a relaxation of any of the requirements which were promulgated in June, 1940.

Very truly yours,

WILLIAM FISHER,

Supervising Inspector,
Seventh District.

[Endorsed]: Filed Sep 18, 1941

Mr. Adams: If the court please, before calling the Captain, I have one witness who is employed, whom I would like to call. [784]

WILLIAM H. COLLINS,

called as a witness on behalf of the respondents, being first duly sworn, testified as follows:

The Clerk: You will state your name.

A. William H. Collins.

Direct Examination

Q. By Mr. Adams: Mr. Collins, what is your present occupation?

A. I am master of the salvage tug "Cuyamaca".

Q. Do you hold any licenses?

A. I have both an operator's and pilot's license for San Pedro and Long Beach area.

Q. What has been your experience at sea, and in connection with boats?

A. I had my own first boat in 1906, and I have spent most of my time on the waters of Los Angeles Harbor.

Q. Are you now engaged in the salvage business?

A. Yes, salvage and general towing; mostly salvage work for underwriters.

Q. On September 4, 1940, you were master of the tug "Ray R. Clark", were you not?

A. Yes.

Q. Do you recall that as being the day of the

(Testimony of William H. Collins.)
collision between the "Sakito Maru" and the
"Olympic"?

A. Yes, I recall, because I went out to tow in
the barge [785] "Point Loma".

Q. Do you recall what time you went out to the
"Point Loma"?

A. Around 5:30 in the morning.

Q. Do you recall what time you arrived at the
"Point Loma"? A. About an hour later.

Q. Will you describe for us the weather con-
ditions that you encountered on your trip out to the
"Point Loma"?

A. It was pretty foggy going out, but after we got
out into the harbor itself, it wasn't so bad until about
the breakwater it was pretty thick; so thick that I
missed the "Point Loma". I shut down, and heard
a miscellaneous assortment of bells, and I went over
to the one which I recognized by the tone as being
the "Point Loma's" bells.

Q. When you got to the "Point Loma", what
did you do then?

A. We went on board, and started getting her
bow anchor in. We were going to move her in for
the season, and we were working over the anchor,
having a little trouble getting the anchor up.

Q. While you were aboard the "Point Loma"
did you hear the whistles of any vessel in the vicin-
ity?

A. Well, we could hear the bell ringing from the
barge "Olympic"; also the barge "Samar". That

(Testimony of William H. Collins.)

was when I first heard the whistles of the "Sakito Maru". [786]

Q. You did hear a whistle which you believed came from the "Sakito Maru"?

A. I know definitely it did, later, but at that time I said to the fellow whom I am now working for—I was being employed by the day—I said, "I smell a Jap in the vicinity here." He said, "How can you tell?" I said, "You can always tell the whistle."

Q. You recognized her as being the whistle of a motor vessel? A. Yes, distinctly.

Q. How many whistles did you hear?

A. Before I saw her, I would say that I heard five—at least five whistles.

Q. At what intervals did you hear those whistles?

A. That is pretty hard to say. The barges were ringing in rotation, like, say, the "Point Loma" first, and then there would be the "Olympic", and then the "Samar"; then it seemed they waited a minute or two, and you would hear the whistle. There were other small boat whistles, but that was about the rotation, I would say.

Q. Did all the whistles appear to come from the same direction, or a different direction?

A. No, the same direction; there wasn't any mistaking that.

Q. Did you later see the "Sakito Maru"?

A. Yes, I saw her right over the "Olympic", from where [787] we were standing.

(Testimony of William H. Collins.)

Q. From where you were standing your line of vision from the "Point Loma" to the "Sakito", as you sighted it through the fog, was right over the "Olympic" barge?

A. Directly over it. If she had missed the "Olympic", she would have hit us.

Q. Tell us what you observed after you first sighted the "Sakito Maru"?

A. It seemed we saw her come into sight, and I turned around to Mr. Judd, and I said, "Boy, he is sure pouring it on now." You could see a cessation of the smoke, and then all of a sudden she just poured out black smoke, or heavier smoke. I wouldn't say black smoke, but heavier, like anybody, familiar with a Diesel engine could see that she had stopped and reversed.

Q. You could see smoke?

A. A different colored smoke. She kept coming, and I said to Mr. Judd, "By God, he is going to miss her." He said, "The hell she is." By that time she hit. I could see her make a pushing motion, more than an absolute blow, because she kept on shoving it right toward us.

Q. It was your thought, as you observed it at that time, that she was going to be brought to a stop, before she reached the "Olympic"?

A. That is right.

Q. What would you say her speed was at the time she [788] actually struck the "Olympic"?

A. I don't think anyone could tell, looking at the

(Testimony of William H. Collins.)

bow of a vessel, how fast it is traveling, but it was not traveling very fast, or it would have gone right through her. As I say, it was more of a pushing motion, because it pushed her over toward us. I kept our towboat, the "Ray R. Clark", standing by, because I thought it was going to push the "Olympic" into us, until it took up the bow anchor of the "Olympic", and started to swing it.

Q. Did you see the barge move through the water, or one portion move further than another portion?

A. It started moving as the bow anchor took hold, and then the stern started swinging toward us more than the other.

Q. The stern of the "Olympic" swung, I take it?

A. Yes, it swung toward us faster than the bow did, after the heavier anchor took hold.

Q. After the "Olympic" came to rest, had her heading changed any?

A. The "Olympic"?

Q. Yes.

A. Oh, distinctly, at the time she had stopped, her bow was headed more south than it had been. In other words, without taking a compass bearing, I would say it had been heading southwest, and it was headed more south.

Q. By the Court: How far was the "Point Loma" from [789] the "Olympic"?

A. Well, I would say around 1200 feet—1,000 or 1200 feet, is what I would say.

(Testimony of William H. Collins.)

Q. How far was the "Sakito Maru" from the "Olympic" when you first saw it?

A. Approximately the same distance; the other side of him may be not quite as far. Distances on the water, as I have found after many years, are very, very deceiving. I have started out a thousand times to run a line over to something, and found out that I did not have enough.

Q. In other words, you generally underestimate than over?

A. Usually, because you will say, "I have got 1200 feet of line, and that will reach over there", and you roll it out, and when you reach the end it still doesn't make it.

Q. By Mr. Adams: As you observed the "Sakito" approaching the "Olympic", did she seem to change her course, or did she seem to remain on the same course?

A. It did not seem to me she changed at all. With a twin screw vessel, when you back down, you lose steerage way. It did not seem to change at all, to me.

Q. Did you continue to watch the two vessels after the collision?

A. Well, I did, until I hollered to this fellow on the "Clark", my deckhand, who was running it, to come over close. I heard him blow a long and short whistle before, because it [790] looked for a minute or two that they were going to push the "Olympic" into us. I figured there was already

(Testimony of William H. Collins.)

the "H-10" and their own boat standing by there. [791] When I saw that the "Olympic's" lee-way had stopped definitely, and also the "Sakito Maru", I was going down to the lower deck; I was standing on the upper deck there, and I took another look, and then I saw her sink.

Q. While you were watching the "Sakito" and the "Olympic" as they both moved through the water, did you ever see the stem of the "Sakito" separate from the "Olympic"? In other words, did you see the two vessels come apart in any manner?

A. Well, no, but we could see the "Olympic"—from where I was we could distinctly see the "Olympic" getting lower on the stem while she was coming at us.

Q. While she was still coming through the water? A. Yes.

Q. When you say getting lower on the stem, do you mean she was being submerged gradually?

A. She was sinking. I remember—that's far back, but it doesn't seem to me that there was any time elapsed between the time she hit, and the mast fell over, and she started sinking; it was practically simultaneous. She listed a little bit toward us, that is, the "Olympic" did, and then she started sinking.

Q. Even before coming to rest in the water, she started to sink?

A. Yes, I would say she cut her freeboard down one-third before the "Sakito" stopped her forward way. [792]

(Testimony of William H. Collins.)

Q. Did you observe anything at the time the "Olympic" came to rest, or about that time?

A. It looked to me like she sank out from under.

Q. Under what?

A. Under the bow of the "Sakito Maru". That is the way it looked. We could see the people moving around distinctly on the boat, and it looked to me like several people, and we could see a man handing out the life preservers, and their getting into them. Several people we could see running down and back. As I recall now, I yelled at Leonard Smith, and when I yelled at my deck hand, he pulled right over there, alongside of the barge. He held it right in there. When I pulled over alongside of Leonard, with the "Clark", after that I pulled over alongside of the "H-10-17" and said, "Well, it's a good thing you were here, and got them all off." "Got them all off?" he said. I said, "You did, didn't you?" He said, "I couldn't get them down here." It looked to me that there was ample time for everyone to get off. I thought how lucky it was that he was there, and I wouldn't believe it. He said, "There are two or three more." I circled around through the wreckage that had floated off of her deck, to see if there was anything that we could do. We did not see anything for awhile, and then we got to a bunch of wreckage, about the area of this room, and I saw an arm coming out of a life preserver. We started pulling through,

(Testimony of William H. Collins.)

[793] and about that time the Coast Guard came up from the other side, and I told my deck hand, "The Coast Guard is coming, and he will get him quicker than we can get through."

Q. The Coast Guard picked up a body?

A. Somebody; the Coast Guard picked him up. Then we pulled on over to the "Sakito Maru" and looked at the hole in her bow.

Q. Mr. Collins, when you saw the "Olympic" seemed to drop from the stem of the "Sakito", was the "Sakito" still going forward, or was it stopped, or did it seem to be going in reverse?

A. I will tell you, it was such a very small time, but we saw it was just about stopped all the way around.

Q. When the two vessels came to a stop, then she seemed to drop from the stem, and sink more rapidly?

A. It just kept on sinking. The whole thing, it doesn't seem to me, took as long as I have been sitting here. It looked to me that just the minute she hit, like the "Olympic" started sinking right down.

Q. Prior to that occasion, had you been out to the barges at the Horseshoe Kelp before?

A. Yes; I had practically taken care of all the anchoring. I was working for John Harvey at the time, but I did all the anchoring for the "Samar" and the "Point Loma", and before that, for all the gambling ships.

(Testimony of William H. Collins.)

Q. When you say you took care of all the anchoring, [794] what do you mean?

A. There is more to it than it seems; you will be surprised. During the season the stern anchor will carry away, and you will have to replace it so the passengers don't get seasick, and all that sort of thing.

Q. Your work was of such a nature that it required you to go out to that area frequently?

A. Frequently. I would take water and oil out to the barges also.

Q. During the occasions you were out in the vicinity of the barges anchored at Horseshoe Kelp, did you ever observe merchant vessels passing by?

A. I would say so. I was almost hit by the "Calmar" boat, when I was working on the "Point Loma" before.

Q. When was that?

A. The same year, but earlier in the season. And one time I was working on the "Samar's" stern anchor, and I believe it was an American-Hawaiian boat that went between the stern anchor where I was, and the ship. I was lifting the anchor, and I said, "Get ready to get off." I had two or three tons of chain on deck, and there was nothing I could do.

Q. Did those two experiences take place during fog?

A. Yes, in fog; both of those were in fog. And at another time, at night. It didn't make any difference whether it was night or day, if an anchor got

(Testimony of William H. Collins.)

haywire Friday [795] or Saturday, you would have to have it ready Sunday, and we would work nights.

Q. On occasions when the weather was not foggy, when you were out there in the daytime, did you observe merchant vessels passing nearby?

A. Yes; they passed right by, both sides of us all the time.

Q. In both directions?

A. In both directions.

Mr. Adams: No more questions.

Cross-Examination

Q. By Mr. Cluff: There was plenty of room, on both sides, where the vessels were anchored, for vessels to pass going into the Harbor?

A. Plenty of room?

Q. Room and water.

A. Yes, they would go around.

Q. For quite a distance, to even take a 10-fathom curve to the eastward?

A. Not so far as that around that point, but quite a distance. There is all sorts of room in any direction, of course, but still, of course, you must use your eyes, if they are too close to you. I would say nearly all the skippers run close to you.

Q. A skipper that is going pretty close to anchored [796] vessels out in that vicinity, passes close to them if he chooses?

Mr. Adams: That assumes facts not in evidence; it assumes, in the first place, that all these skippers know that the barges are anchored there.

(Testimony of William H. Collins.)

The Court: Will you reframe the question, and state it over again?

Q. By Mr. Cluff: At what time, with reference to that impact of the barge and the "Sakito", did Mr. Smith start his "H-10" over toward the "Olympic"?

A. Well, I would say that it was just before he hit.

Q. Just before he hit?

A. Yes, because he didn't see—I don't believe until my deck hand hollered at him, as I remember it—that's a long time ago—but I think the deck hand hollered at him before he noticed how close he was getting.

Q. Your deck hand, by the way, was Mr. Liddell?

A. Yes.

Q. Can you fix your time with reference to the blowing of that whistle, about the time the deck hand hollered, when you saw the change of smoke from the "Sakito's" stack, indicating a reverse in the engines? Was that just about the time you hollered to the deck hand?

The Court: Will you read the question?

(Question read by the reporter.)

Mr. Adams: I object to the question as being a bit [797] confusing and unintelligible.

The Court: I think the witness probably understands the question.

Mr. Cluff: I will withdraw it and reframe it, if

(Testimony of William H. Collins.)

I may. I am trying to fix the time when Smith started, with reference to the reversing of the "Sakito's" screws, as indicated by the change in smoke from the stack; can you orient the time that Smith started?

A. I don't think he started until, oh,—time on water, like that, doesn't mean much. I wouldn't say, because I don't think Smith even saw it.

The Court: You don't know what time he started?

A. No, I don't think Smith even saw it. I was looking one way, at the accident coming, and he was looking down at the "H-10".

Q. By Mr. Cluff: About the time your deck hand blew the whistle had Smith started then?

A. Not the first time, no. I yelled at him, because we hadn't even seen the "Sakito Maru" at the time the deck hand blew the whistle.

Q. Your best recollection is that Smith started very shortly after you saw the "Sakito" change to reverse? A. Something like that.

Q. Can you fix the time that you saw that puff of smoke with reference to the first time you saw the "Sakito"? A. About the same time. [798]

Q. About the same time you saw her smoke puff change? A. Yes.

Q. Mr. Smith in the "H-10-17" got under way and pursued the ten or twelve hundred feet, or whatever it was, over to the "Olympic", and then turned, and finally came alongside of the gangway

(Testimony of William H. Collins.)
and disembarked passengers before the "Olympic"
sank, am I right? A. Yes, you are right.

Q. Anyhow, you saw Smith go over to the gangway, and get alongside? A. Yes.

Q. And you saw passengers get off onto the boat?

A. That's right, and get back over his boat onto
the gangway.

Q. I believe you said you were rather surprised
he hadn't gotten them all off, because there seemed
to be ample time before the ship went down?

A. Yes, I was.

Q. During all that time was she settling?

A. Yes, she seemed to settle, and then hesitated.

Q. Hesitated quite a measurable length of time?

A. Not a measurable length of time, but hesitated in going on down. The whole thing, it seemed to me, it wasn't over two minutes, from the time she was hit until she sank, and during all this time things happened.

Q. Things were moving very fast? [799]

A. Yes.

Q. Did it still appear to you that the "Sakito"
was right up on top of her?

A. When she finally went down? No.

Q. The "Sakito" had backed away at that time?

A. I think the "Sakito" had technically, or the
"Olympic" had drifted away from it, the way I
would put it.

Q. How was the set of the tide that morning?

A. There wasn't very much, as I remember it,

(Testimony of William H. Collins.)

because when we went out to the "Sakito" with the "Clark" afterward she was about in the same line. She had apparently backed about the same groove, backed out, that she came into. It was not an actual groove.

Q. I don't believe I understand.

A. The "Sakito Maru" backed out approximately on the course she came in.

Q. How was the "Clark", your vessel, tied up, or was it tied up?

A. She wasn't tied; she was just standing by; just laying to, just ahead of it.

Q. Was the motor dead?

A. It is a direct reversible motor; when it is stopped, the motor is always dead. When you start ahead, you start the motor; when you start to back, you start the motor backwards.

Q. The motor was not running? [800]

A. No.

Q. It had not been for some time?

A. I would not say it had not been for some time, but you are always jiggling to hold her into position. I was not on the "Clark".

Q. You were on—

A. The "Point Loma".

Q. Who was handling it?

A. Frank Liddell.

Q. He was handling the "Clark"?

A. Yes.

Q. So whether he would occasionally go up.

(Testimony of William H. Collins.)

ahead, and then back to hold it in position, or not, you couldn't say?

A. I didn't pay any attention.

Q. About how far would you say the movement of the "Olympic" toward the "Point Loma" continued?

A. I would say she cut the distance in about half.

Q. She cut the distance in about half?

A. Roughly.

Q. Before she finally came to rest?

A. Yes. That is, her stern did; her bow would not be quite that way, because it had checked up the anchor chain.

Q. So she must have moved by the force of the collision?

A. As I say, it must have been more of a push than a hit, because she kept on moving, whereas a hit doesn't mean much on the water. It was more of a pushing. [801]

Q. You would not be able, I suppose, to form any very definite estimate of the time that the "H-10" was alongside the gangway, and alongside the starboard side? [802]

A. No, but it seemed to me she was there quite awhile. I couldn't understand why the "Lillian L" pulled away, when Smith had plenty of time to go in.

Q. Did you see the "Lillian L" go away?

A. Yes, the "Lillian L" went away, or else it was pushed away; it is hard to say.

(Testimony of William H. Collins.)

Q. It could have been pushed away?

A. Yes.

Q. As a matter of fact, I think the testimony this morning was that the "Lillian L" was caught in the gangway with the list.

A. We were 1,000 feet away, and it is hard to say.

Q. There was quite an appreciable time that the "H-10" was lying there?

A. Yes. I thought everybody had time to get off, and we could hear the yelling, and see them putting on the life jackets, and such things.

Q. You had worked on the anchors of both the "Samar" and "Point Loma"?

A. Many times.

Q. In 1940, or previous years?

A. Previous years. In fact, for six years I had been taking care of the anchors of most of those barges out that way.

Q. I wonder if you would tell me, during those six years, how many barges were out there? [803]

A. There used to be another one they called the "Rainbow". "Rainbow", technically, wasn't the name of the barge. The barge's name was the "Samar".

Q. It simply means that she ran from the Rainbow Pier?

A. She did not run from the Rainbow Pier; she ran from the Belmont Pier. The "Star of France" was the "Olympic", and they called her the "Olympic" because she ran as the "Olympic".

(Testimony of William H. Collins.)

Q. There was the "Samar"?

A. Yes, and the "Point Loma". Before that there was another "Rainbow". That was the "Makawalla". And then, as I say, the gambling ships.

Q. Were the gambling ships further eastward or westward?

A. About a mile or a mile and a quarter eastward. They changed vicinity.

Q. They moored in that vicinity in 1938 and '39?

A. Yes, and in 1940, too.

Q. Then after our friend Warren went after them——

A. They stayed quite awhile after that. They didn't operate, but we still had to go out and take care of the anchors.

Q. Can you tell us how many years the present "Rainbow" had been out there?

A. I think that was the second year. They used to move back and forth; they followed the fish.

Q. I wonder if you are not thinking about the "Point [804] Loma"? A. No.

Q. As I understand, the master of the "Rainbow" stated somewhere that he had been out there for six years.

A. He had, but the "Rainbow" used to be below there.

Q. You mean not in the precise spot?

A. Yes.

Q. But she had been on the banks?

A. Yes.

(Testimony of William H. Collins.)

Q. The "Point Loma" had been there how long?

A. This was her first year out, or second.

Q. The "Point Loma"?

A. Yes, she had always fished out of San Diego.
This was her first year, I am pretty sure.

Q. Then there was this other "Rainbow"?

A. There were never two "Rainbows" out at the same time.

Q. The earlier "Rainbow" had been out before her time? A. Yes.

Q. Or the "Makawalla". A. Yes.

Q. Do you remember the "Wolfman", Joe Shearer's boat? A. I know the "Wolfman".

Q. I remember, he had a flat bottomed barge, and had the "Penobscos". He used to be a client of mine.

Mr. Adams: In addition to the objection I previously voiced to testimony about vessels in the vicinity of [805] Horseshoe Kelp, which I wish to renew to this line of questions, I think Mr. Cluff is simply reminiscing now.

The Court: I haven't heard any objection. I have been listening.

Mr. Adams: I did not, until I thought he had definitely assumed the character of reminiscing.

The Court: You had better get down to questions.

Q. By Mr. Cluff: Aside from the barges, you have observed for many years other vessels that anchored or drifted or fished in the vicinity of what they called the Horseshoe Kelp? A. Yes.

(Testimony of William H. Collins.)

Q. On a great many occasions and at various times?

A. Yes; there are always some who fish there.

Q. Practically all during the season, day and night?

A. I am not a fisherman. I attend to anchor work mostly.

Q. You have spoken of blowing a long and short. What does that indicate?

A. A steamer not anchored, and not under way.

Mr. Adams: What is that?

A. A steamer not anchored, and not under way.

Q. By Mr. Cluff: Does that relate to a steamer, or to a tug and tow?

A. No, it relates to any steamer drifting, not under way. [806]

Q. Wouldn't you say any steamer drifting, and not under way, would be two long and a short?

A. No, that is not what the government says.

Q. We will look that up some day when we are not trying a case. How long was the whistle one long one short and a long, before the "Sakito" came in sight.

A. I don't know. I couldn't say. I knew it was once before, and once as I saw it I signalled him to blow it again.

Q. Was it as much as a couple or three minutes, the first one?

A. I would have said that, but the other day I timed myself out, and found I was an awful liar on that. I refuse to commit myself.

(Testimony of William H. Collins.)

Q. After the collision happened, you could see clearly the "Olympic", and people putting on life belts, and you could make it out from your position?

A. I could make it out from my position.

Q. You could see people putting on life belts?

A. Yes.

Q. And the visibility was then good?

A. Yes.

Q. As the "Sakito Maru" appeared to you, what was the first thing you saw there?

A. It was either the mast or the bridge. It was a different color than her deck; and her hull. I picked up [807] first—I don't remember just which it was, but it was the superstructure that I saw first; that is all I can say, because the "Olympic" was in between, and it is hard to say.

Mr. Cluff: That will be all.

Q. By Mr. Velpmen: What is your estimate of the visibility about the time of the collision?

A. I will have to answer that doubly. I would say 1,000 feet to the "Olympic" and—

Q. In answering the question that way do you have an opinion upon it?

A. And then I could see her another 800 or 900 feet the other side of the "Olympic".

Q. That is where you place the "Sakito Maru" the first time. Could you see anything beyond that?

A. I couldn't tell that. All I could see was the bow coming toward her.

Q. By the Court: When you estimated, in your

(Testimony of William H. Collins.)

testimony a little bit ago, that you were about 1,000 feet from the "Olympic", when you first saw the "Sakito Maru", it was about 1,000 feet away—

A. The other side of it, yes.

Q. That would make it about—

A. About 2,000 feet, yes.

Q. Do you know whether or not you could have seen the "Sakito Maru" before you did?

A. No, I don't believe I could, because I was looking [808] right straight at the whistle.

Q. You figured it was roughly 2,000 feet when you first saw it? A. Yes.

Q. By Mr. Cluff: Then this 1,000 and 2,000 feet is an estimate?

A. An estimate. I did not measure it.

Q. By Mr. Black: Did you happen to notice or hear any three blast whistle from the "Sakito Maru" coming before the collision?

A. No, I didn't. I did not notice any at all. If I did at the time, it is so long ago I don't remember it now.

Q. By Mr. Cluff: The whistle on the "Clark", will you describe that? Was that an air whistle?

A. Yes, it was an air whistle; a diatone whistle.

Q. A blast?

A. Yes, it was very good, and you could hear it quite a ways.

Q. Did you ever determine how far away it could be heard under ordinary conditions?

Mr. Adams: I object to that as incompetent, ir-

(Testimony of William H. Collins.)
relevant and immaterial, and no proper foundation.

The Court: If he knows.

Mr. Adams: It is incompetent and immaterial, if the court please, unless the conditions are shown to be comparable to the ones under discussion. [809]

The Court: I did not hear what you said?

Mr. Adams: The evidence is of no materiality unless it is shown that on the occasion when he heard this whistle the conditions were the same as they were at the time of the collision.

The Court: That seems to be a pretty fine point.

The Witness: It all depends, too, on the way you would be heading.

The Court: I think I will sustain the objection.

Q. By Mr. Cluff: Let us put it this way then: Did you ever make a test of the distance at which you could hear the whistle of the "Clark", assuming a calm day, with some fog, and wind——

The Court: I think you are getting into too many assumptions in trying to figure that out. I would like to ask you, the whistle was a great deal louder than the bells on the different barges, was it not?

A. Yes, it would be louder than the bells.

Mr. Cluff: I think that answers the question.

The Witness: If it happened to be headed in the right direction. In the other direction it would not be as loud; it would be whichever way the mouth of the horn was.

The Court: Which way was the mouth headed, do you know? A. I haven't any idea.

(Testimony of William H. Collins.)

Q. By Mr. Cluff: As the "Clark" lay alongside of the "Point Loma", was her bow toward the bow of the "Point Loma", [810] or away from it?

A. She wasn't lying alongside. She was off 50 or 75 feet; I don't remember which way.

Q. You don't remember whether her bow was headed east or west, north or south?

A. No, I wasn't paying any attention; we were lifting an anchor.

Mr. Cluff: Nothing further. [811]

(M. T. Bischof was here sworn as interpreter in the English and Japanese languages.)

SYUNZI SATO,

a witness called on behalf of the respondents, being first duly sworn, testified as follows:

(Mr. Bischof interpreting.)

The Clerk: What is your name?

A. Syunzi Sato.

Direct Examination

Q. By Mr. Adams: Captain Sato, on September 4, 1940, you were the master, were you not, of the "Sakito Maru"? A. Yes, I was.

Q. You hold, do you not, a license or certificate of captain, first grade? A. Yes, I do.

Q. You have held that license or certificate since 1927, have you not? A. 1927. [812]

(Testimony of Syunzi Sato.)

Q. That entitles you to be master of any vessel of any tonnage on any ocean, does it not?

A. Yes.

Q. Captain Sato, after you finished high school, you attended the Tokio Nautical School, for five years, did you not? A. Yes, five years.

Q. You have been to sea since 1918, have you not?

A. Yes.

Q. Since your graduation from the Tokio Nautical School you have been the captain of seven vessels, have you not? A. Yes, seven vessels.

Q. Tell us the dimensions of the "Sakito Maru": Length over all—

Mr. Cluff: It is all in evidence and undisputed, so far as we are concerned.

Mr. Adams: I did not recall, Mr. Cluff.

Mr. Cluff: They are all in the deposition of Mr. Sato.

Mr. Adams: There is no dispute about it?

Mr. Cluff: There is no dispute about it.

Q. By Mr. Adams: The "Sakito Maru" has two screws? A. Yes.

Mr. Cluff: That is all in, too; her engine power, screws, kind of engine, and everything.

Mr. Adams: I can probably cover two more statements by leading questions, to save time. [813]

The Court: Proceed, gentlemen.

Q. By Mr. Adams: Is it not a fact, Captain Sato, that the "Sakito Maru" is equipped with a gyro compass which has a course recorder?

(Testimony of Syunzi Sato.)

A. It has a gyro compass.

Q. Does it also have a course recorder connected to the gyro compass? A. Yes, it has.

Q. There is no correction for the gyro compass, is that correct? A. No, it has not.

Q. Her course then is a true course, is it not?

A. Yes.

Q. At the time of the collision the "Sakito Maru" was on a round trip from Yokohama to New York and return, was she not? A. Yes.

Q. And the "Sakito Maru" had called at Los Angeles Harbor en route from Japan to New York on July 16, had she not? A. Yes.

Q. The vessel sailed from New York on August 21, bound for Yokohama via the Panama Canal from Los Angeles, isn't that true?

A. August 21 was when we departed from New York.

Q. And the purpose of calling at Los Angeles Harbor [814] was for bunkers only?

A. Yes.

Q. Prior to making this voyage, how long had it been before you were at Los Angeles Harbor on any other occasion?

A. I do not remember that definitely.

Q. Do you remember in terms of years?

A. I think it was 1937.

Q. When the vessel arrived at Los Angeles Harbor, after the collision on September 4th, was her draft 24 feet 7 inches forward? A. Yes.

(Testimony of Syunzi Sato.)

Q. And 27 feet 11 inches aft? A. Yes.

Q. Loaded as she was on that day, what speed did the "Sakito Maru" make over the ground, when the engines were full ahead? A. 16 knots.

Q. Under the same conditions, what speed did the "Sakito Maru" make over the ground when her engines were slow ahead?

A. About 6 $\frac{1}{4}$ or 6 $\frac{1}{2}$ knots.

Q. As the "Sakito Maru" approached Los Angeles Harbor, several hours prior to the collision, what course was she steering? A. 340 degrees.

Q. When had that course first been set? [815]

A. A day before, September 3rd, at 9 a. m., about; I am not positive.

Q. By referring to the log book can you refresh your memory on that?

A. Yes, I can, if I look at it.

The Court: What difference does it make when he set it, as long as within the last hour or two they were traveling that anyhow? The chart shows the course of the vessel.

Mr. Adams: You have got to get it fixed. I show you the deck log of the "Sakito Maru".

Mr. Cluff: Mr. Adams, I know from the first officer that they fixed the course off Benito, at a certain time. If you want to read that into the record, it is all right. I shan't dispute it.

Mr. Adams: I would rather let the witness refresh his memory; he is less apt to make a mistake than I am.

(Testimony of Syunzi Sato.)

Q. Is that the smooth log of the "Sakito Maru" for that voyage? A. Yes.

Q. Referring to the log, will you tell us when you first set the course of 340 degrees true?

A. Yes, I can.

Q. Please do so. A. 9:05 a. m.

Q. You now refer to the entry in the log book for the day of September 3rd, which reads: 9:05 San Benito Island [816] light—what is that?

A. House—lighthouse. [817]

Q. What does that stand for—northwest side of West— A. West, West Island.

Q. Beam 060? A. Yes.

Q. 14½ off? A. Yes.

Q. What does that stand for: Altered course to— A. 340 degrees.

Mr. Cluff: I wonder if we can ask, on that point, what 060 stands for.

Q. By Mr. Adams: What does 060 stand for? Is that the bearing?

A. The whole course was 340. We started on a 330-degree course; then we changed to 340 degrees.

Q. But what does the notation for that item, which was read, (060) stand for?

A. We take the 330 degrees, is the course at—

Q. Isn't that the indication of the bearing?

A. Yes, the bearing.

Q. What bore 060 from the "Sakito Maru" at that time?

A. The northwest side of West Island.

(Testimony of Syunzi Sato.)

Q. Abeam?

A. No, the lighthouse. This lighthouse is indicated in parentheses; is the northwest side of West Island.

Q. When the lighthouse was abeam how did she bear in [818] points of compass?

The Court: Gentlemen, you might explain to me what difference all this makes, as long as you have the chart here showing she was traveling 340 degrees? There is no dispute about it.

Mr. Adams: That is true, your Honor, but you can run a course 340 degrees true anywhere from San Diego to the Philippine Islands; if you don't get a fixed course of 340 true, it doesn't mean anything, but means that he was going approximately northwest.

A. 340 degrees indicates the direction.

The Court: He was traveling along here, and the two boats came together, and while San Benito Island may be important to someone else, I can't get it.

Mr. Cluff: We can all navigate once we get a fix, but if we don't get a fix we can't navigate at all.

Q. By Mr. Adams: Captain Sato, did you obtain a fix at noon on September 3rd?

A. Yes; I fixed my position.

Q. Was that by sextant observations?

A. Yes.

Q. Can you give us your position as determined in that manner at that time?

(Testimony of Syunzi Sato.)

A. The latitude was 28-52 minutes north and the longitude was 116-06 minutes west.

Mr. Cluff: That is noon, September 3rd? [819]

Q. By Mr. Adams: That is noon, September 3rd, is it not, Captain?

A. Yes; twelve o'clock.

Q. Prior to sighting Santa Catalina Island on the morning of September 4th what was the last bearing that was taken?

A. At 1:50 a. m. of September the 4th we saw the Coronado Island Light.

Q. Was that the South Coronado Island Light?

A. Yes.

Q. Was that a one-point bearing or did you obtain cross bearings?

A. Only one bearing on the lighthouse.

Q. Was the lighthouse on your port hand?

A. Starboard.

Q. Starboard hand? A. Yes.

Q. How far off were you from the lighthouse?

A. I think about 14½ miles, my recollection.

Q. Will you refer to the log book and refresh your memory, and tell us what the log book shows on that?

A. No; I made a mistake. It was 20½ miles.

Q. Did the "Sakito Maru" continue to proceed on a course of 340 degrees true? A. Yes.

Q. When did you first come to the bridge of the "Sakito Maru" during the morning of September 4th? [820] A. 5:58 a. m.

(Testimony of Syunzi Sato.)

Q. Where was the "Sakito Maru" with reference to Santa Catalina Island at that time?

The Interpreter: Will you repeat that question again?

(Question read by the reporter.)

A. The southeast point. At that time it was abeam.

Q. How far off was the "Sakito Maru" estimated to be from the southeast point of Santa Catalina Island at that time? A. 10½ miles.

Q. Was that distance estimated by a one-point bearing? A. Two-point bearing.

Q. Two-point bearing. How long did you remain on the bridge on that occasion?

A. About two minutes.

Q. How was the weather at that time?

A. It was very clear.

Q. Did you leave any instructions with the officer on watch before you left the bridge?

A. Yes.

Q. What instructions?

A. I told them to let me know when they got about five or six miles from the lighthouse on the breakwater, Los Angeles breakwater. [821]

Q. Were you later called? A. Yes.

Q. What time did you get up to the bridge then?

A. About 7:00 o'clock.

Q. Who was on the bridge at that time?

A. Chief Officer, apprentice officer and the quartermaster and the reserve quartermaster.

(Testimony of Syunzi Sato.)

Q. Was the first quartermaster that you mentioned the helmsman?

A. Yes; that is the helmsman, the quartermaster.

Q. How was the weather when you came to the bridge at 7:00 o'clock a. m. that morning?

A. It was clear, but by the bow it was a little misty.

Q. How was visibility off the port hand, clear?

A. Yes; it was clear on the port side.

Q. Was the starboard hand clear?

A. Yes; it was clear.

Q. But ahead it appeared to be misty?

A. Yes; it was a little misty.

Q. How far did you estimate your visibility was ahead at 7:00 a. m.?

A. About 3 miles, I think.

Mr. Adams: About 3 miles. If the court please, I have already brought out by the first officer in his deposition the various bearings that were taken from, oh, somewhere around 5:58 up until the last bearing was taken prior to [822] the collision. I can go over that ground again. I think it will serve to explain to the court any questions it might have on that score, but it is cumulative. I just would like to ascertain the court's desire.

The Court: I don't care for anything cumulative. Somebody is going to have to explain this chart to me, though, before we get through.

Mr. Cluff: I suggest, Mr. Adams, that you show —that is, I am not going to dispute the log or dispute your navigation because I have got to accept it per-

(Testimony of Syunzi Sato.)

force. I suggest you take the chart, the navigating chart they used and let the Captain interpret it for the court. I think we could probably save a good deal of time that way.

Mr. Adams: I was going to suggest, if the court wanted to go into that, perhaps it would be well to break off now before we take up the events of the collision and take up the positions of the vessel as the "Sakito" approached the barge, that is, ascertaining her positions, and I can explain the chart at this time. I just wanted to find out if the court wanted me to go into that explanation.

The Court: There is no use of going over the same ground.

Mr. Adams: I think we can do it much more rapidly than we did with the first officer, but I think it will serve to demonstrate it a little more clearly.

The Court: If we are going to take a new line, we had better take our afternoon recess. This will be a good place [823] for a break.

(Short recess.)

Q. By Mr. Adams: Captain Sato, I believe you wished to make a correction with respect to your testimony concerning visibility at 7:00 a. m., is that correct? A. Yes.

Q. What is the correction you wish to make?

A. When I testified a short while ago I said 3 miles. I meant 3 miles on either side.

Q. What was visibility ahead at 7:00 a. m., your estimate? A. About a mile.

(Testimony of Syunzi Sato.)

Q. About a mile. Captain Sato, is this the navigating chart that was used as a working chart aboard the "Sakito Maru" at that time?

A. Yes; this is it.

Q. Will you explain the bearings that were taken, beginning with the first bearing off of Santa Catalina Island until the last bearing that was taken before the collision?

A. Those lines there all indicate bearings.

Q. As the vessel approached Los Angeles Harbor, the line that we first find intersecting the course of 340 degrees true is a single line indicating what?

The Court: If you know, lead him on those things, I think. You may lead him. [824]

Mr. Adams: Yes.

Q. This first line that I refer to, Captain Sato, is a one point bearing on the southeast point of Santa Catalina Island, is that correct?

A. Yes. At that time it was not a definite, positive bearing.

Q. Then there are two more lines of the same character. Are those bearings of the same nature?

A. Yes. At that time we were able to definitely see the island.

Q. I see. Then, the next bearing as we approach Los Angeles Harbor appears to be a two point bearing or a cross bearing. Was one of the points the southeast point of Santa Catalina Island?

A. Yes.

Q. The other bearing was on the light at Lone Point, or was it just Lone Point?

(Testimony of Syunzi Sato.)

A. Not the light; just the Point.

Q. Just the Lone Point?

A. Just the Lone Point; yes.

Q. The land itself? A. Yes.

Q. Now, there were in addition to that, one, two—two more bearings taken on the same points, were there not?

A. Yes; two point bearings. From here it is definite, about definite; but from here down it was not definite. [825]

Q. In other words, indicating the third two point or cross bearing on the chart? A. Yes.

Q. There is a line drawn from a point on a course of 340 degrees true there to the southeast point of Santa Catalina Island. What does that line represent?

A. That would be 250 degrees of the side of the ship, 340 degrees.

The Court: What does he mean by that?

Mr. Cluff: Beam bearing; right straight out at right angles. A. Beam.

Q. By Mr. Adams: Was there also a cross bearing taken at that time? A. Yes.

Q. And is that indicated? That is, the position of the vessel at that time is indicated by a dot with a circle around it, opposite of which is written 5:58, is that true?

A. This circle with a dot in it marked 5:58 was the position of the ship.

Q. That represents the position of the ship, as

(Testimony of Syunzi Sato.)

you fixed it at that time, or as it was fixed at that time, from various bearings that had been taken up to that time, isn't that true?

A. Yes. Somebody else determined that.

Q. Yes, but that is what that represents, doesn't it? [826] A. Yes, that is right.

Q. And when was this second line drawn, which is parallel to the long line on the course 340 degrees true, but which is shorter than that? A. 5:58.

Q. There is next on that course, represented by a shorter line—

The Court: Does that indicate that they changed their course at that point?

Mr. Adams: No, if I might explain—

Mr. Cluff: Go ahead.

Mr. Adams: That indicates that after they got up here, where they found that they could take bearings, they found that they had, through drifting, or slight error, or current, come off the course that they thought they were on up to that time.

The Court: They found themselves on the other course?

Mr. Adams: They were on the same course.

The Court: They found that drift, or current, or whatever it was, had taken them off a certain distance?

Mr. Adams: Yes, so they therefore again had to lay out their course, after they fixed their position.

The Court: This line as originally drawn was

(Testimony of Syunzi Sato.)
the course they intended to take?

Mr. Adams: They were following it, but as they proceeded up here, they were probably proceeding on dead [827] reckoning.

The Court: When they got to this point, instead of being on that line, they found themselves at that point?

Mr. Adams: That is true.

The Court: And they continued on that line?

Mr. Adams: That is true.

Mr. Montgomery: What does 5:58 mean?

Mr. Adams: That is the time. Above the 5:58, that was the next position shown on that new course that was laid out then, is a dot with a circle around it, and opposite it is 6. What does that represent?

The Court: That shows that was 6:00 o'clock?

A. Yes.

Q. By Mr. Adams: But there was no bearing taken at 6:00 o'clock, was there?

A. No, there was not.

Q. That position was estimated by computing the speed, was it not? A. Yes.

Q. Then there is another mark on the chart, 6:08; a dot with a circle around it. Cross bearings were taken at that time, were they not? A. Yes.

Q. It was taken on a point of land on Santa Catalina Island, wasn't it?

A. This bearing was not taken on any definite point, [828] because you couldn't see; the coast line wasn't clear.

(Testimony of Syunzi Sato.)

The Court: You might lead him through that.

Q. By Mr. Adams: You then took another one point bearing at 6:26 on the southeast point of Santa Catalina Island, didn't you?

A. Two points, yes.

Q. Then the next indication of that course is a point with a circle around it opposite the mark 7. Does that represent the position that you computed for the vessel at 7:00 a. m., that morning?

A. Yes, that was computed on dead reckoning, computing from the speed, from this point here.

Q. That point there is 6:08? A. Yes, 6:08.

Q. You had proceeded then for about 52 minutes on dead reckoning up to this position for 7:00 a. m.? A. Yes.

Q. Did you later determine, Captain Sato, that this line which represents your course at 340 degrees true was not actually your true course; in other words, did you find that your vessel had set over from this line here?

A. Which line do you mean?

Q. If you will assume, Captain Sato, that the barge that the "Sakito" collided with was approximately 3.3 miles off the San Pedro lighthouse in a direction of 159½ true, will you fix that position on this chart as best you can? [829] Will you fix a position 3.3 miles off the San Pedro light in a direction of 159½ true? [830]

A. Do you mean taking the bearing with the light?

(Testimony of Syunzi Sato.)

Q. Yes. A. I can't do it with this.

Q. You can't do it with that?

A. No. $159\frac{1}{2}$ is very small. I will have to give you a rough estimate. Can I make a line there?

Q. Yes. You are now making a line showing the direction $159\frac{1}{2}$ as best you can figure it?

A. Is that right, 3 miles?

Q. 3.3. A. That would be about 3.3.

Mr. Cluff: That is close enough.

Mr. Adams: May it be stipulated that that is within the circle shown there, opposite which there is a symbol for an anchor?

Mr. Cluff: Yes.

A. This is only a rough estimate. It is very hard for me to figure it out otherwise, with this instrument.

Q. By Mr. Adams: Captain Sato, assume that this point which you have just found is 3.3, $159\frac{1}{2}$ true off the lighthouse; assume that is where the barge was when the "Sakito" hit it, what accounts for the "Sakito" being in a line to strike the barge while proceeding at 340 degrees true at that time? The course plotted here would put her westerly of the barge. Can you account for it, in other words?

A. That would be east (indicating)? [831]

Q. Yes.

A. That I don't know. Possibly tide. I think it was tide.

Q. Does he mean current?

A. Current—we call it tide—when we get to the open sea we call that a current.

(Testimony of Syunzi Sato.)

Q. Do you consider it unusual that the current or tide might have set you over as much as a half or three-quarters of a mile after you had proceeded at dead reckoning for about an hour?

A. Yes, I do think it, after I thought it over.

Q. That is not uncommon?

A. It is common, about a half a mile to one side or the other, within an hour. You can notice that we even went over in that direction, taking that course, but from down below there, not only the tide, but you couldn't steer a ship on a straight course, like a train is on rails. There is nothing positive that you can go on the same course all the time.

Q. There are various factors that influence your course, is that correct? A. Yes.

The Court: May I ask counsel a question; this is for the Court's information: Assuming that the vessel proceeded on 340 true, then the collision would not have occurred, isn't that true?

Mr. Adams: No, they were still on 340 degrees true. The [832] heading of their ship was still 340 degrees, but instead of being here, as they had plotted out on this navigating chart, current or tide had set them over as they were proceeding for an hour, so that they were at a point a quarter or half a mile to the right of where they estimated they would be without such a current or tide, which they could not definitely ascertain.

The Court: The point I have in mind is this: It is the testimony of one of the Coast Guards that the usual course south was 340 degrees.

(Testimony of Syunzi Sato.)

Mr. Adams: The course coming up from the south, yes.

The Court: Coming up from the south, yes. I was wondering, with boats following that, how much leeway they would have? Here we have a situation that is undisputed, that there have been barges there for some time, and they have come close, but never hit them, and if these boats were all traveling that same route, how do you account for it?

Mr. Adams: There are several features that might be involved there. Might I make a statement on that? Of course, there are some situations that must be disregarded entirely. With all vessels coming from the south, approaching Los Angeles harbor on a course approximating 340 degrees true, during clear visibility, where the barges could be seen, they, of course, could then go around, and there wouldn't be any reason for a collision. [833] Now, if they were coming in a fog, or if their visibility was obscured as they approached the barge, even though they steered 340 degrees true, their position at any given time might be as far off the course they had originally set as the "Sakito Maru" was, when she got abeam Santa Catalina Island.

The Court: The point I am getting at is this: Supposing the boat had been on either one of these, the points of the compass would be 340?

Mr. Adams: Yes, depending on where they started.

The Court: What distance would there be at the opening, still traveling on 340 degrees?

(Testimony of Syunzi Sato.)

Mr. Adams: You can see that they were laid out here to come in just at the easterly end.

The Court: I can see it is laid out all right.

Mr. Adams: And this line took them about the westerly end.

The Court: We have been talking about channels and streams; what I am trying to get, in my own mind, is, how wide is that stream or channel, so-called, there, that existed, that boats used going back and forth?

Mr. Adams: If the court please, if they took the point of departure from Los Angeles Harbor——

The Court: They would go out exactly where this line is drawn?

Mr. Adams: Yes; it would be 160, that is what our [834] testimony shows during that time. Running 3.3 miles, there would certainly be less opportunity for them to get off their course than there would be on their last fix, which was true south of Catalina Island. When this vessel came up a course of 340 degrees true, when they could begin to fix their position by landfalls or observations, then they are going to correct their observations, so as to bring them to that point there.

The Court: Still you haven't given me the information that I am seeking. You may as well admit, gentlemen, that one of the serious points in this case is the fact that this and other barges have been anchored right out there where vessels come and go. There is going to be a question, and one of the things

(Testimony of Syunzi Sato.)

the court will have to consider, is how wide, you might say, a stream or channel, did the boats have to go and come through there.

Mr. Cluff: It is our position, I think we can demonstrate that a vessel coming in on 340 true might approach Los Angeles Harbor within this radius, and pass a matter of 3 or 4 miles within that area. Would you agree to that?

Mr. Adams: Yes.

Mr. Cluff: This is a fair, practical demonstration.

The Court: I can see how he did it. You have answered my question.

Q. By Mr. Adams: Did you, Captain, Sato, wish to say something to answer the Judge's inquiry?

[835] A. No.

Mr. Adams: Does the court have any further questions about the chart?

The Court: No.

Mr. Adams: I will proceed with the narration of events then.

Mr. Montgomery: May I ask a question there: If he had kept his course, he would not have collided, isn't that true?

Mr. Adams: No, Judge Montgomery. He kept his course.

Mr. Black: The record, I don't believe, is clear on whether the bearing 159 $\frac{1}{2}$ refers to the place of anchorage after the collision, or the place where the collision occurred.

(Testimony of Syunzi Sato.)

The Court: As I understood it, it was the place where the barge was anchored.

Mr. Adams: It was where the barge was sunk, which Lieutenant Hewins estimated was probably maybe not over 150 yards from where the barge was when the collision happened.

Mr. Cluff: We will put in some evidence from another man on the coast guard, who took bearings while all three barges were there. What we have is 159 true 3.2.

Mr. Adams: There is a margin of difference there of maybe 100 or 200 yards.

Mr. Cluff: Which is probably accounted for by the movement of the "Olympic" from the point of collision. [836]

Q. By Mr. Adams: Captain Sato, after 7:00 a. m. did you remain on the bridge?

A. Yes. [837]

Q. As the vessel proceeded, after that time, on her course, did the conditions of visibility ahead change?

A. Yes, it gradually got worse.

Q. Did you give any orders as the vessel proceeded after 7 a. m.? A. Yes, I did.

Q. What orders did you give?

A. At 7:03 I gave the order to stand by engines; then slow ahead.

Q. Were those two orders given almost simultaneously?

A. First I gave the signal to stand by, and then right away, slow ahead.

(Testimony of Syunzi Sato.)

The Court: What does the signal "stand by" mean?

Mr. Adams: That is the signal that I know is more customarily given aboard Japanese steamers to indicate that they are approaching a harbor, and it is to notify the engineers that they might be called upon to execute maneuvers with the engines.

Mr. Cluff: Mr. Adams, doesn't it go further than that in International; it is simply a ring down to the engine room for the engineer to get off his box, and that they are going to use the controls?

Mr. Adams: Yes. Many of the engine room personnel come on duty at that time.

The Court: In other words, you might say that means to be at attention?

Mr. Adams: Yes, on the alert. [838]

Q. What other orders did you give, besides the orders to the engine room, at 7:03, if any?

A. To the engine room?

Q. No, to anyone else.

A. I gave orders to blow the whistle, the fog signal.

Q. Who executed that order?

A. First the chief officer; then after that, continuing, the apprentice officer. [839]

Q. About how long did the first officer blow the fog signal?

A. About five or six whistles continuously. Oh, pardon me. The duration of five or six seconds.

Q. No. How many times did the first officer blow the fog signal?

(Testimony of Syunzi Sato.)

A. I don't remember definitely, about once or twice.

Q. And then the apprentice officer continued to blow the fog signal thereafter?

A. Yes.

Q. How long were the blasts blown?

A. Five or six seconds.

Q. At what intervals? A. About a minute.

Q. Every minute? A. Yes.

Q. What did you do as the vessel proceeded after 7:03?

A. I was standing lookout after that and tending to the maneuvers of the ship.

Q. You did not give any orders to change the course, did you, at 7:03?

A. No; I did not.

Q. What do you estimate visibility was ahead at 7:03? A. 7:03?

Q. Yes. [840]

A. About half a mile, a little over, possibly, over half a mile.

Q. How were your telegraphs set before the standby and slow ahead order at 7:03?

A. What signal do you mean?

Q. How were the telegraphs, the engine-room telegraphs, set? A. Full speed.

Q. That was before 7:03? A. Yes.

Q. And what was the speed with the engine-room telegraphs set at full speed?

A. About 16 knots.

(Testimony of Syunzi Sato.)

Q. Over the ground?

A. Over the what?

Q. Over the ground.

A. That was the absolute speed at that time over the ground.

Q. What was the speed of the vessel with the engines at slow ahead, loaded as the vessel was that day?

A. Before I gave the signal it was 16 knots, and it was $6\frac{1}{4}$ or $6\frac{1}{2}$ miles when I gave the signal, after the signal slow ahead.

Q. How long do you believe it took for the speed of the vessel to decelerate from 16 knots to $6\frac{1}{4}$ or $6\frac{1}{2}$ knots?

A. About three minutes, about three minutes.

[841]

Q. Do you believe, then, at 7:06 the "Sakito Maru" was proceeding at a speed of about $6\frac{1}{4}$ or $6\frac{1}{2}$ knots? A. Yes; I think so.

Q. How was the visibility ahead at about 7:06?

A. 7:06?

Q. Yes.

A. I cannot give you definite. We have no instruments to determine that. Approximately five to six hundred meters.

Q. Who was on the bridge at that time, that is, after 7:03?

A. Myself, chief officer, apprentice officer, the quartermaster, the helmsman, and the reserve quartermaster.

(Testimony of Syunzi Sato.)

Q. What did you do after the vessel entered the fog at 7:03?

A. I stood lookout and then attended to the maneuvers of the ship.

Q. Did you stand in one position all the time before the barge was sighted?

A. No; I moved about.

Q. Are the wings of the bridge of the "Sakito" open?

A. Yes; they are open.

Q. Did you go out on the open wings some of the time?

A. Yes; I went to both wings and also on the inside.

Q. What did the first officer do after the vessel encountered the fog?

A. He did the same thing that I was doing. [842]

Q. What did the apprentice officer do?

A. He was acting as lookout and blowing the fog signal, that is about all.

Q. Did he make any entries in the memo pad?

A. Yes; when he gave the engine signals or something like that.

Q. What did the relief quartermaster do?

A. Oh, he was cleaning.

Q. Where was the other quartermaster?

A. He was tending to the wheel, at the wheel all the time.

Q. Was there anyone on the forecastle head after the vessel entered fog at 7:03?

(Testimony of Syunzi Sato.)

A. There was a lookout there, a sailor.

Q. Do you remember his name?

A. Shimada.

Q. Was he an "AB" sailor, an able-bodied sailor? A. Yes.

Q. Did you see him go out to the bow and stand lookout? A. Yes; I did.

Q. At what time?

A. About a minute after, about 7:04, about that time.

Q. Was anyone else out on the forecastle head after he went out there?

A. Yes. As soon as the fog signal is given somebody stands lookout there. [843]

Q. Was there somebody out there before Shimada arrived there?

A. Yes; just a little before that.

Q. Do you remember who that was?

A. He is an apprentice sailor by the name of Yokoyama.

Q. Did he stand lookout at the bow until Shimada arrived there? A. Yes.

Q. And Shimada relieved him at the bow?

A. Yes.

Q. Did Yokoyama remain on the forecastle head after Shimada arrived?

A. No; he was not standing there.

Mr. Cluff: What is the answer, please?

Mr. Adams: He was not standing there.

Q. Did you see what Yokohama did after Shi-

(Testimony of Syunzi Sato.)

mada arrived? Did you see what Yokoyama did after Shimada arrived?

A. No; I don't know.

Q. I am referring now to a photograph which is an exhibit attached to the deposition of T. Yokota, and marked Yokota's Exhibit No. 4. Captain Sato, is that a photograph of the forward deck of the "Sakito Maru"? A. Yes; it is.

Q. Is the raised portion of the vessel shown in the background of the picture the forecastle head?

A. The forecastle is from here forward. [844]

Q. To the bow? A. Yes.

The Court: You had better give the number of the photograph that you are looking at so the record will be clear on it.

Mr. Adams: Yes. I believe I did give this.

The Court: Did you?

Mr. Adams: Yes.

Q. I am referring to another photograph marked Yokota's Exhibit No. 5. Is that a picture of the forecastle head of the "Sakito Maru"?

A. Yes; it is, from here up.

Q. I am now referring to another photograph marked Yokota's Exhibit No. 6. Is that also a photograph of a portion of the forecastle head of the "Sakito Maru"?

A. This is the forward part of the forecastle head.

Q. Is that right at the foremost part of the ship?

(Testimony of Syunzi Sato.)

A. Yes; it is in the forward part of the ship. Of course, the bow it a little further ahead there.

Q. This is as far forward as a person can be?

A. Yes; that is it.

Q. There appears to be a platform or a raised landing or stage in the picture. What is that?

A. That is a platform for a person to stand on.

Q. Did you see anyone stand on that after the "Sakito" encountered fog? [845]

A. Yes; I did.

Q. Who?

A. First, was Yokoyama, that is the apprentice sailor, and then after that, Shimada, the sailor.

Q. There is also shown in this photograph a megaphone, is that correct?

A. That is correct.

Q. Did Shimada later use that megaphone?

A. Yes; he did.

Q. I show you another photograph, Yokota's Exhibit No. 7. Is that another picture of the same platform that we have been speaking about?

A. Yes; that is the platform. According to that picture it is the same thing, same spot. I think so.

Q. Are those pictures a fair representation of the bow of the "Sakito Maru" at that time?

A. Yes.

Mr. Adams: If the court please, we have this afternoon been arranging that bond that I spoke of earlier, and it is necessary for the Captain to go up there for about five minutes, as I understand

(Testimony of Syunzi Sato.)

it, in order to sign some papers or something; and then he is free from their custody and can return. Their office closes at 4:30 and they were very anxious that he get up there before that time. Otherwise—

The Court: We will run to 4:15 and I will give you a break. [846]

Mr. Adams: Fine, thank you.

Q. Captain Sato, what was the first notice that you received of anything ahead as the "Sakito Maru" proceeded in fog that morning?

A. 7:09.

Q. What happened then?

A. I got a notice from Shimada, the lookout there, that he saw something ahead.

Q. What did Shimada say?

A. He said he could see a boat ahead, and that is why he blew the whistle—the megaphone, through the megaphone.

Q. Did he shout that through the megaphone?

A. Yes; a loud voice.

Q. What time was that? A. 7:09.

Q. Did Captain Sato see anything?

A. Yes; I saw the boat right after that.

Q. Did you immediately look after the lookout yelled that warning?

A. Right after he gave me the—told me about it.

Q. What did you see?

A. I saw a boat. [847]

Q. Well, did you see it clearly?

(Testimony of Syunzi Sato.)

A. No. No; it was in the fog. I couldn't see it very clearly.

Q. Were you able to see what kind of a boat it was?

A. No; at the first I couldn't determine what it was.

Q. Could you tell in what direction the boat was headed? A. Not in the beginning; no.

Q. At what angles was the boat lying, if you could tell, with reference to the course of the "Sakito Maru"?

A. Right angles, about.

Q. Where was the boat with reference to the stem of the "Sakito"? A. How far was it?

Q. Where was it with reference to the stem?

A. Right in front of it.

Q. Was it directly ahead?

A. I think about right in front of the bow.

Q. How far did you judge that boat to be away from the "Sakito Maru" when you first saw it?

A. About 200 meters. I think. That was my estimation. That is what I estimated.

Q. Before you heard a warning from the lookout what did you judge your visibility to be?

A. From my estimate, I think about 300 meters.

Q. Is that what you thought your visibility was before you saw the barge? [848]

A. Yes, sir; before I saw the barge I thought.

Q. What did you do after you saw the barge?

A. I gave orders for the helm, to put the helm

(Testimony of Syunzi Sato.)

hard to starboard, at the same time I stopped—gave the signal to stop the engines and then immediately full astern.

Q. Did you continue to watch the barge?

A. Yes; I was looking at it.

Q. Prior to the time that the lookout shouted had you heard a sound or signal from any other vessel? A. I didn't hear anything.

Q. After you saw the barge did you hear a signal from any other vessel? A. No; I did not.

Q. Before the collision did you hear any signal?

A. A little before the collision I heard a bell.

Q. Describe the sound of the bell that you heard.

A. I heard the bell ringing continuously.

Q. What time did you give the order hard astarboard and stop and full astern to the engines?

A. 7:09.

The Court: Gentlemen, we will stop at 7:09 or these other stopping places, so you can arrange for this man to be returned to the custody of the Immigration Department.

(An adjournment was taken to Friday, September 19, 1941, at 10 o'clock a. m.)

(Short discussion as to future procedure omitted from transcript.) [849]

Los Angeles, California,

Friday, September 19, 1941.

10 a.m.

Mr. Adams: May it please the court, the other day I called the court's attention to the fact that a new libel had recently been filed and which we had answered, but had not filed a petition under the 56 rule. Mr. Cluff agrees that we might do so. That is the libel in intervention in the suit originally filed by the Hermosa.

The Court: Who is this party?

Mr. Adams: Elliott. He is a personal injury claimant. We have one petition covering the Hermosa suit, and this libel is in intervention in that suit, and we have simply amended that one petition. Mr. Cluff has been served with a copy of the amendment.

Mr. Cluff: I haven't been served with a copy. Are we named as a party?

Mr. Velpmen: You are named in our pleadings, but we haven't served you.

Mr. Cluff: I understand we will have a reasonable time thereafter?

Mr. Velpmen: I am not going to serve it. I am doing it this way.

Mr. Cluff: It's all right with me.

Mr. Velpmen: We will get the same results, doing it this way. [850]

SYUNZI SATO

recalled.

(Record of questions and answers before adjournment read by the reporter.)

Further Direct Examination.

By Mr. Adams:

Q. Captain Sato, who executed the order on the ship's telegraph to the engine-room for the stop and full astern order? A. The chief officer.

Q. Will you explain, Captain Sato, what you mean by the term "engine-room telegraph"?

The Court: I think it is explained in one of the depositions I read. It is simply a means of communicating with the engine-room, is it not?

Mr. Adams: Yes, if the court please. There are handles on this telegraph, and they are manipulated by hand.

The Court: I think the testimony was that it communicated to the engine-room certain orders for them to execute.

Mr. Adams: Yes, and there is an arrow—

The Court: May I ask, is this the signal that they answer by a blast of the whistle?

Mr. Adams: No, the ship's telegraph has—

The Court: I mean, after they receive the signal, how do they know that the order is being executed?

Mr. Adams: The telegraph on the bridge has the speeds of the vessel on it, with arrows pointing to that speed, and [851] handles are set to corre-

(Testimony of Syunzi Sato.)

spond with the arrows pointing at the speed at which the vessel is going, or that it is desired to go. If it is going slow ahead, then they jingle the telegraph, to call attention to that, or to put it at stop, or full astern. The same process takes place on the ship's telegraph in the engine-room; that is, the arrow follows, and the engine-room answers to demonstrate that it has received the order.

The Court: How does it answer?

Mr. Adams: By jingling the telegraph.

Mr. Cluff: The telegraph operates both ways.

Mr. Black: It has a pointer that is actuated by the engine-room, that shows up on the bridge.

Mr. Adams: That is correct.

Q. Captain Sato, after you gave the order full astern, was there a signal sounded on the whistle of the "Sakito Maru"? A. Yes.

Q. What signal was sounded?

A. Three short.

Q. What did that signal indicate?

A. It indicates that the ship's engines are full astern.

Q. Did you observe the helmsman execute the order hard to starboard? A. Yes, I did.

Q. Did you continue to watch the "Olympic" as the [852] "Sakito" proceeded toward it?

A. Yes, I did.

Q. As the "Sakito" approached the "Olympic", did the "Olympic" become clear through the fog?

A. As we approached it got clearer.

(Testimony of Syunzi Sato.)

Q. Did you observe whether or not the "Sakito" responded to the rudder prior to the impact?

A. Yes, I saw it, slowly.

The Court: He said, "I saw it, slowly." What does he mean by that?

Mr. Adams: I think my next question will illustrate it.

Q. Did you observe whether the "Sakito Maru" changed her heading prior to the impact?

A. Yes, I did, just a little bit.

Q. In what direction did the heading change?

A. Starboard, about 10 degrees.

Q. About 10 degrees? A. Yes.

The Court: The court can't follow, as quickly as you gentlemen can, what you mean by starboard and port; whether it is left or right. I can't follow it as quickly as you gentlemen, who are accustomed to these things.

Mr. Adams: I think it is confusing; I admit I am confused, and I think perhaps it may better be referred to as right and left. As a matter of fact, that is a practice more commonly becoming adopted. [853]

Mr. Cluff: Starboard is always right, the way you are facing.

Q. By Mr. Adams: When you say that the heading was changed to approximately 10 degrees to starboard, you mean to the right?

A. Right.

Q. Prior to the actual impact, did you see any other boats besides the "Olympic"?

(Testimony of Syunzi Sato.)

A. I did.

Q. What did you see in that connection?

A. I saw a small boat beyond the "Olympic", a little to the left or port side.

Q. To the port side of the "Sakito"?

A. Yes.

Q. Off the port bow? A. Yes.

Q. Were you able, before the impact, to determine the bow and stern of the "Olympic"?

A. Just a little before the impact, yes.

Q. Would the "Sakito" have hit the "Olympic", if the order "hard to starboard" had not been given? A. If I had not given that order?

Q. Yes.

A. Surely, I thought that it would hit if I hadn't given that order.

Q. Why did you give the order hard to starboard? [854]

A. I gave it to the right.

The Court: You did not answer the question. Why?

Q. By Mr. Adams: Why did you desire to go to the right?

A. Because it was instantaneous, and it is the policy of the ship to always go to the right.

Q. Did you consider that as the proper maneuver, in an effort to avoid striking the barge?

A. Yes, in order to avoid hitting it.

Q. When you gave that order, did you think that

(Testimony of Syunzi Sato.)

possibly the "Sakito Maru" might clear the barge by turning to the right?

A. Yes, at that time I thought so.

Q. Did you later determine that the vessel did not have enough distance to respond to the right rudder?

Mr. Cluff: I think the questions are getting pretty leading. I had better register an objection at this time, that the questions are leading and suggestive. You are getting down to pretty important matters.

Mr. Adams: I will withdraw the last question.

Q. Do you know the turning circle of the "Sakito Maru"? A. I do.

Q. Proceeding slow ahead, as the vessel was at that time, and loaded as she was, about how far would the vessel travel in the direction she was going prior to the hard right order?

Mr. Cluff: May I ask a question on voir dire? [855]

Mr. Adams: I hadn't finished my question.

The Court: Let him finish the question.

Mr. Adams: May I have the question?

(Question read by the reporter.)

Q. By Mr. Adams: I will reframe that question. Traveling at the speed that the "Sakito Maru" was, at the time the barge was sighted, how far would the "Sakito" travel before she responded to the hard right rudder?

(Testimony of Syunzi Sato.)

Mr. Cluff: Before that question is answered may I ask a couple of questions on voir dire?

Mr. Adams: It hasn't been yet translated to the witness.

The Court: Let him finish.

Mr. Adams: If the court please, the witness is entitled to hear the question.

(Question read by the reporter.)

Mr. Cluff: May I ask my questions?

The Court: I can't see the purpose of asking questions at this time.

Mr. Cluff: May I state that?

The Court: Yes.

Mr. Cluff: The witness says that he knows the turning curves. I want to know whether they have been posted; whether they are the result of posted computations by a naval architect, or simply observations. If they are posted computations, the witness's statement as to how far she would turn, is not the best evidence, and if his knowledge [856] is based upon computations, we are entitled to those computations.

The Court: It would seem to me that the master of a vessel would know, from practical experience, the maneuverability of his vessel.

Mr. Cluff: Possibly so; but if there are computations made by a naval architect that is the very best evidence you can get of the turning circle.

The Court: You may ask him.

(Testimony of Syunzi Sato.)

Q. By Mr. Cluff: Captain Sato, you say that you know the turning curve of the "Sakito Maru"?

A. Yes.

Q. Did you determine that curve from maps or blueprints made by naval architects?

A. No, I didn't compute them from naval architects' charts, but at the time that the ship was tried, when she first took the water, I computed it from that.

Q. When she was tried on her trial trip, she was handled, navigated and maneuvered about, and then her turning curves were established and posted?

A. Yes. [857]

Q. And you would have those plots on the ship?

A. Yes, I have.

Q. And those show her turning curve at various speeds? A. Yes.

Mr. Cluff: Then I object to the witness answering the question on the ground that his statement is not the best evidence of the ship's turning curve.

Mr. Adams: If the court please, computations made after a test of that character is certainly a written record of the judgment of the person making the test.

The Court: If the witness knows, I am going to let him answer. May I ask, is this evidence available?

Mr. Adams: No, it is aboard the ship. It certainly is not a matter of major importance. I am only endeavoring to demonstrate that a ship is not

(Testimony of Syunzi Sato.)

like an automobile; that you just can't turn it around on a dime; and I am not endeavoring to work out any minute matters.

The Court: This court is very much interested in the maneuverability of the vessel. I think it is very material, and I think the best evidence available should be produced. At the same time, it does not seem to me that the master of a ship, operating it—that anybody would know any more about it than he would.

Mr. Adams: That is true.

The Court: You may proceed with the questions. I am going to admit it. [858]

The Interpreter: Do you want me to ask him?

Mr. Adams: Yes, if he understands the question.

A. After I gave the order, it went about 60 or 70 meters before she answered.

Mr. Cluff: To which we object upon the ground that it is not responsive. He is asked how far she would go according to her turning curves, loaded as she was at that time.

A. After, 60 or 70 meters.

The Court: Do you mean by that that it would start to take effect—that it would have moved 60 or 70 meters before the boat actually commenced to curve?

Mr. Adams: Yes. The vessel, even after the hard right rudder order was executed, will proceed on her previous course before the rudder takes, and a response if felt.

(Testimony of Syunzi Sato.)

Mr. Cluff: Mr. Adams, may I ask if you have the posting of the vessel's turning curves available here?

Mr. Adams: We have not.

Mr. Cluff: Do you know where they are?

Mr. Adams: Probably aboard the vessel. I can ask the Captain. We were never asked for them and they never seemed to be of any great materiality.

Mr. Cluff: Do you remember the chief officer was asked for them, on his deposition?

Mr. Adams: I do not recall that he was.

Mr. Cluff: Anyhow, they are not available in Los [859] Angeles?

Mr. Adams: No, they are probably aboard the vessel, wherever the vessel is; I don't know; probably in Japan.

The Court: He said 60 or 70 meters.

A. Yes, before a response is felt.

Mr. Cluff: I will put that into feet. About 190 feet. Three and a quarter feet to a meter.

Mr. Adams: If the court please, I have worked out, for my own convenience, and I have some copies here of meters translated into yards and feet, which might serve to illustrate, because we always think in terms of yards and feet, and it might be helpful to the court.

A. Where did the stem of the "Sakito" strike the "Olympic"?

A. The port side; the left side of the "Olympic".

(Testimony of Syunzi Sato.)

Q. Where, with reference to the bow and stern of the "Olympic"?

A. I couldn't give you anything definite; about the middle.

Q. Prior to the time the "Sakito" struck the "Olympic", did you observe anything to indicate that your engines and propellers were going astern?

A. Yes.

Q. What did you observe to indicate that?

A. If it goes full astern there is a vibration in the ship. [860]

Q. Did you observe that before the collision?

A. Yes, I know that definitely.

Q. Do you believe that before the collision the speed of the "Sakito" was reduced?

A. Yes, I do. I did know that then.

Mr. Cluff: May I have the question and answer?

(Record read by the reporter.)

Q. By Mr. Adams: How fast do you think the "Sakito" was going at the time of the actual impact? A. When it was hit?

Q. When it was hit.

A. I think about a mile or a mile and a quarter—I mean knots.

Q. How far did the "Sakito" travel forward after hitting the barge?

A. I couldn't give you anything definite, but I think about 20 or 30 meters.

(Testimony of Syunzi Sato.)

Q. Do you believe that the propellers were going astern at the time of the impact? A. Yes.

Q. At what time, according to the "Sakito's" time, did the collision occur? A. 7:10 $\frac{1}{2}$

Q. What was the practice aboard the "Sakito" with respect to logging the time, when any event occurs, between minutes? [861]

A. The usual way is that we recorded by minutes, but this time it was very dangerous, so we took that in a half minute record.

Q. When an event does not occur exactly on the minute, but occurs, let us say, 20 seconds after the minute, at what time do you usually log it?

A. In a case like that we figure it one minute.

Q. If an event occurs at, let us say, 9:10 and 20 seconds, what time would you log it in the log book?

A. Usually, in the usual way, 10 minutes—9:10.

Q. That would be the nearest minute?

A. Yes, the closest to the minute.

Q. Supposing an event occurred at 9:10 and 40 seconds, how would you log it in the log book?

A. 9:11.

Q. Why did you not log the time of the collision in that manner, on this occasion?

A. Because that was a very important time, and in order to let it be known that it was a little before 9:11; that was the reason why we recorded it that way.

Q. Is that the only event that was timed and logged in that manner?

(Testimony of Syunzi Sato.)

A. Only on that ship yes, I have that experience.

Q. I mean this was the usual practice followed, which you have just described, with respect to timing and logging of the other events? [862]

A. I don't understand you.

The Court: I presume that seconds are important here in figuring speeds and time, and everything, and I would be interested to find out whether or not he gave any direction as to the insertion of 10 $\frac{1}{2}$ —how they came to not follow the usual custom; whether he gave any instructions on it.

Q. By Mr. Adams: Captain Sato, did you instruct anyone to enter the time of the collision at 7:10 $\frac{1}{2}$, or did someone act upon his own initiative and do that? A. It was my order.

Q. To whom?

A. I gave the orders to the chief officer and the apprentice officer recorded it.

The Court: I would like to ask a question or two: How did you determine that it was 7:10 $\frac{1}{2}$?

A. The apprentice officer was looking at his watch, and I determined it by that.

Q. Did you see his watch?

A. No, I didn't see any watch at that time.

Q. What was the order that you gave?

A. I told him afterward that he should insert it in that manner.

Q. Was there any memorandum made fixing the time by the watch at actually 7:10 $\frac{1}{2}$, or was it 7:10—50—20, or what? [863]

(Testimony of Syunzi Sato.)

A. At that time I couldn't give you the exact time to the last second, because it is a watch with a big dial on it.

Mr. Cluff: May I suggest a question, Mr. Bischof? When you take the word "watch", is there a distinction in Japanese between watch and clock?

The Interpreter: "Tokei" is watch or clock.

Mr. Cluff: He says the first officer's watch. I was wondering whether it was a pocket watch, or the bridge clock.

A. That is the bridge clock.

Mr. Cluff: So when you translate "watch" it means clock as we would understand it, rather than a pocket watch? A. The clock.

Q. By Mr. Adams: Where in the wheelhouse was the clock located?

A. On the bulkhead on the starboard side.

Q. Near the forward bulkhead?

A. A little back of the middle.

Q. After the impact did you give any orders to the engine room? A. I did.

Q. At what time, and what order?

A. I gave an order to stop at 7:11.

Q. Do you know for sure that that order was given after the impact?

A. Yes, I know that definitely. [864]

The Court: What time was it, does the evidence show, that the boat actually went under?

Mr. Adams: According to the "Sakito's" time—

(Testimony of Syunzi Sato.)

The Court: They are the only ones that have any time?

Mr. Adams: Yes—I believe it was 7:14. I wouldn't be certain.

Q. Where was the stem of the "Sakito" with reference to the "Olympic", when you gave the order stop at 7:11?

A. I couldn't give you anything positive, but I think it was at a point 20 meters forward.

The Court: Read the question and answer.

(Record read by the reporter.)

The Court: What does that mean?

Mr. Adams: I don't know.

A. He means after he gave the order at 7:11 to stop.

Mr. Adams: No, withdraw the question. At 7:11, when you gave the order stop, where was the "Sakito" with reference to the "Olympic"?

A. It was touching the "Olympic".

Q. Had the stem of the "Sakito" stove in the port side of the "Olympic" at that time?

A. That was rather instantaneous at that time, and it was just about the time it hit.

Mr. Cluff: I object to the answer as not responsive. It doesn't seem to me that it bears any relation to the question. [865]

The Court: It doesn't mean anything.

Mr. Adams: Read the last question again, please.

(Question read by the reporter.)

A. Yes.

(Testimony of Syunzi Sato.)

Q. At the time you gave the order "Stop engines" at 7:11, was the "Sakito" still making headway? A. About stopped.

Q. About stopped?

A. It had stopped.

Q. It had stopped?

A. I observed that it had about stopped.

Q. About how long do you believe it would take, after that order was executed by the engine room, to stop the engines, for the propellers to stop turning in the reverse direction?

A. After the engines are stopped the propellers would be turning around.

The Court: For how long?

Q. By Mr. Adams: For how long?

A. 10 seconds.

Q. After the stop order at 7:11, did the "Sakito" continue to remain in the hole made in the "Olympic's" side?

A. After I gave the order to stop, it was not any time at all it separated.

Q. What separated? A. Both ships. [866]

Q. Do you mean that the stem of the "Sakito" separated from the "Olympic"?

A. I don't mean that it absolutely separated from the "Olympic". What I mean by that is, after the stem was completely into the "Olympic", it just separated a little from that.

Q. At what time did you next give an order to the engine room? A. 7:13. [867]

(Testimony of Syunzi Sato.)

Q. Where was the stem of the "Sakito" with reference to the port side of the "Olympic" at that time?

A. It was separated about 10 meters from the "Olympic".

Q. And what order did you give at 7:13?

A. Full astern.

Q. When you gave that order "full astern" at 7:13,—are you sure that the stem of the "Sakito" was away from the "Olympic"?

A. Yes, it was.

Q. Why did you give the order "full astern" at 7:13?

A. In order to drop the anchor after we had gotten away from the "Olympic".

Q. What, in your opinion, would have happened if you put the engines ahead at 7:13, instead of astern, not full ahead.

(Question read by the reporter.)

A. If I had given the order of ahead at that time, in my opinion, I would have had the same thing happen. In other words, if I had given the order of "full ahead", I would have had another collision.

Q. Do you think that if you put the engines ahead, you would have been able to fit the stem of the "Sakito" right in the hole that was already made in her side?

A. I absolutely couldn't do that.

(Testimony of Syunzi Sato.)

Q. What would have been the effect if the "Sakito" by moving had struck the "Olympic" again?

A. It would cause more damage. [868]

Q. After the "Sakito" hit the "Olympic", was the "Olympic" shoved through the water any distance? A. Yes, it did move a little.

Q. Did all parts of the "Olympic" move the same distance, or did the bow or stern of the "Olympic" move further than the other?

A. No, the stern moved more, of the "Olympic"; the stern of the "Olympic" moved more.

Q. Do you believe that the stern of the "Olympic" swung more than the bow?

A. Yes, I do.

Q. What did you do after giving the order "full astern", at 7:13?

The Court: Gentlemen, isn't there enough evidence on that? We have the other evidence here that they backed up and anchored. There isn't any point of going into that in detail, is there?

Mr. Cluff: It might be important to find out just how far from the point of collision they came at anchor.

The Court: Why is it important?

Mr. Cluff: It tends to fix the position of anchorage.

Mr. Adams: I don't know how important that would be.

Mr. Cluff: If you don't ask him, I will.

The Court: What I mean is this: The evidence

(Testimony of Syunzi Sato.)

is in as to the boat, and the fog, and whether they backed up a quarter of a mile or half a mile, one wouldn't be any more at [869] fault than the other.

Mr. Adams: The reason I want to cover it is, if there is a charge on the part of a libelant with respect to the maneuvers of the "Sakito", after the collision, I want the right to go into it.

The Court: Unless somebody calls something to my attention, I wouldn't be impressed by that as a fault, because there were other boats there, able to pick up the survivors. They would not have had time to lower their boats, and could not *have* done any more than those already there, so I can't see where that would help the situation.

Mr. Adams: There are, of course, a great many wild charges made in this respect, and I might call the Court's attention to——

The Court: So far as I am concerned, after listening to the plaintiff's case and their evidence —that's the reason I tried to stop you, unless it is essential for fixing exact spots, so far as measurements are concerned, but the evidence here is that they backed up a considerable distance, and in due time put down their life boat, and went out there. If there had not been any other boats around there to save the survivors, and they maneuvered to that distance, it might be another question. But there were plenty of boats there, and available, and there was no loss of life by the failure on their part to get life boats out quicker than they did.

(Testimony of Syunzi Sato.)

Mr. Montgomery: There is nothing to show whether there [870] were other boats or not.

The Court: They were there, and it was not the failure of them to have boats there.

Mr. Montgomery: It is their conduct all the way through. If they didn't stand by and render aid, the law is that they are negligent.

Mr. Adams: I appreciate the Court's position, and I realize that I am imposing upon the Court's time, but I want the right to answer such charges as Judge Montgomery has just made.

The Court: We can't take up the Court's time to answer everybody's charges back and forth. As I stated before, the evidence is clear that these other boats were there, and were immediately on the spot, and were there much quicker than it would have been possible to have gotten a life boat from the "Sakito Maru" out there, no matter where they anchored. It presents a different question than the withdrawal of this boat, or whether it did withdraw from the "Olympic II", and whether or not by maintaining its position it could have held the "Olympic II" up, even a minute or two longer. Probably, if it had been able to hold the "Olympic" up a couple of minutes longer, there would have been no loss of life, because seconds counted at that time. Whether or not that had anything to do with it, that is a different question; but I can't see whether they rendered aid or not—they could not have rendered any more than was already available. That is the way I look at it. [871]

(Testimony of Syunzi Sato.)

Mr. Adams: The Court is talking in terms of proximate cause. In other words, even if they did not lower a life boat and render any aid, it could not have caused the tragedy which resulted. I simply wanted to demonstrate that there was no fault.

The Court: We are not trying a libel case, gentlemen.

Mr. Adams: No, but there have been so many charges made about their failure to render aid, it is of vital importance.

The Court: Then cover it hurriedly.

(Short recess.) [872]

Q. By Mr. Adams: Captain Sato, in referring to the times which I will ask you, if you do not recollect the times exactly, you may refresh your memory from the log book which I have just placed before you.

Mr. Cluff: Just a moment. That is the smooth log you are giving him?

Mr. Adams: That is the smooth log.

Mr. Cluff: That is not the book with the written memo pad?

Mr. Adams: Well, let us have the memo pad then.

The Court: Wait a minute. Is the book kept in the regular course of the operation of the boat?

Mr. Adams: Yes.

The Court: Why isn't it admissible under that provision of the judicial code?

(Testimony of Syunzi Sato.)

Mr. Adams: I never heard that they weren't, your Honor.

Mr. Cluff: The evidence in this case is that on the Japanese ships, as in all ships, they have a rough log—that is what they call it—on the bridge, and enter up things as they occur. The smooth log is written up after the watch is over, and the evidence in this case is that it was written up in the afternoon after the collision. They are both the same.

Mr. Adams: That is right; they are both the same.

Q. I show you a slip of paper, Captain Sato, and ask you if that is the deck memo pad which was kept by the apprentice officer during these events? [873] A. Yes, they are.

Q. Now, if the times which I asked you about are not clear in your recollection you may refer to the deck memo pad and refresh your memory. What was the next order to the engine room after the order "full astern" at 7:13?

Will you instruct him, please, to refer to that memo pad? There has been an objection to the smooth log.

A. 7:14, "stop starboard engine."

Q. What was the next order?

A. 7:15, "stop port engine."

Q. At what time was the anchor let go?

A. 7:19—7:17.

Q. When were preparations made to let go of the anchor commenced?

(Testimony of Syunzi Sato.)

A. Immediately after; no time at all after the collision.

Q. What orders did you give in that connection?

A. I told the chief officer to make arrangements to drop the anchor.

Q. When did you do that?

A. Soon after the impact.

Q. After the anchor was dropped at 7:17 were any further orders given to the engine room?

A. Yes; I did.

Q. What orders?

A. At 7:18, "slow ahead."

Q. What was the purpose? [874]

A. Because at that time the ship had a stern way and in order to stop that immediately.

Q. In other words, you put the engine "slow ahead" to check the stern way? A. Yes.

Q. What was the next order to the engine room?

A. 7:19, "stop."

Q. When was the life boat lowered into the water? A. 7:20.

Q. When were preparations commenced to lower the life boat into the water?

A. Immediately after the impact they were making the arrangements, preparations.

Q. Why did you wait until the motion of the vessel had stopped before you lowered the life boat?

A. The ship is going astern, it is very hard to lower a life boat at that time.

(Testimony of Syunzi Sato.)

Q. You mean because when the ship is in motion it is hard to lower a life boat into the water?

A. Yes; it is very hard.

Q. What did the life boat do after it was lowered into the water at 7:20?

A. It went to the point where the "Olympic" had gone down.

Q. How long did it remain in that area?

A. Two hours. [875]

Q. Returned to the ship at what time?

A. About 9:15 or 9:20.

Q. Did you observe the barge sink?

A. I did.

Q. Did you note the time that the barge sank?

A. I did not see the time definitely.

Q. Did the apprentice officer make an entry in the log book concerning the time the barge sank?

A. Yes.

Q. Was that made in the regular course of his duties? A. Yes.

Q. Please refer to your log book and tell us what time is entered there showing when the barge sank?

Mr. Cluff: May the record show that the witness is looking at the smooth log and not at the deck memorandum?

Mr. Adams: It may, so far as I am concerned.

A. 7:14.

Q. Captain Sato, after the lookout at the bow shouted the warning that the ship was ahead what did the lookout do, if you noticed?

(Testimony of Syunzi Sato.)

A. You mean after he gave the order that there was a ship ahead?

Q. After he shouted the warning.

A. You mean what did the lookout do?

Q. Yes.

A. He still kept on looking. [876]

Q. How long did he remain there?

A. Just a little before the impact.

Q. Then what did he do?

A. He got down from the forecastle onto the lower deck.

Q. Did he run?

A. Yes; he did run a little.

Q. Did he shout?

A. No; I did not hear any shouting.

Q. Did he wave his arms?

A. I don't remember seeing that.

Q. He left the immediate bow just before the impact?

A. Yes; just before the impact he came away from there.

Q. Did you observe whether any other sailors were on the forecastle head or on the fore deck after the barge was sighted?

A. After they saw the barge?

Q. Were any other sailors on the forecastle head?

A. I don't think there were on the forecastle.

Q. Were there any on the well deck?

A. I think there was about one there.

Q. Did you observe what he did right about the time of the collision?

(Testimony of Syunzi Sato.)

A. The ship was approaching and he had stuck his head out and was looking.

Q. When the "Sakito" is headed as she was at that time and proceeding at the slow speed that she was at that time [877] within what distance can the "Sakito" be brought to a stop by putting the engines full astern?

The Interpreter: What was the last of that question?

(Question read by the reporter.)

A. About one and a half or two lengths of the ship, I think.

Q. What, in your opinion, caused the stem of the "Sakito Maru" to separate from the "Olympic"? A. You mean after it hit?

Q. Yes.

A. My ship had stopped and from the impact of my ship on the barge caused it, caused the barge to move and that was the reason I separated. On account of that inertia the other ship would naturally go forward a little bit, still go forward.

Q. In other words, you think that the momentum on the part of the "Olympic" caused by your ship striking that "Olympic" had not ceased when your ship was checked? A. Yes; I think so.

Q. How high above the surface of the water was the bridge of the "Sakito", loaded as she was at that time? A. 52 or 3 feet.

Q. How high above the surface of the water was the deck of the forecastle head at the immediate bow,

(Testimony of Syunzi Sato.)

headed as the vessel was at that time?

A. About 33 or 4 feet.

Q. At the immediate bow of the "Sakito" is there a rail [878] or a bulwark?

A. There is a bulwark.

Q. Is that a solid bulwark?

A. Solid, steel plate.

Q. Does that extend aft to the break in the forecastle head?

A. No. Up to a certain point only.

Q. Almost to the after end of the forecastle head? A. No; not that much.

Q. How high is that bulwark at the immediate bow? A. About five feet.

Q. How high is the platform on which the lookout stood?

A. I think about a foot and a half.

Q. How far back from the stem of the "Sakito" must a person stand in order to stand on that platform?

A. You mean from the point where they stand on the platform to the immediate head of the stem of the boat?

Q. Yes. A. Two or three feet.

Q. Is Shimada taller or shorter than you?

A. About the same.

Q. How tall are you? A. Five foot three.

Q. How much does one of your anchors weigh?

A. I am not positive, but around four tons.

Q. Can you drag that anchor when your engines are going [879] full ahead?

(Testimony of Syunzi Sato.)

- A. It depends on the length of the chain.
- Q. Will you explain what you mean by that?
- A. If the chain was short, why, it would be able to drag it. If it is over thirty fathoms you cannot drag it. If it is more than thirty fathoms it cannot drag it.
- Q. Assume that the bow anchor of the "Olympic" weighed 6000 pounds and that the chain running from the bow of the "Olympic" to the anchor was 630 feet and that it was a $2\frac{1}{4}$ -inch chain; do you think that the "Sakito", after striking the "Olympic", could have caused the bow anchor to be dragged?

The Interpreter: I have to get that question.

(Question being read.)

Mr. Cluff: Just a moment, Mr. Bischof. To which we object upon the grounds it is incompetent, irrelevant and immaterial and no foundation laid. There is no evidence as to the holding ground, there is no evidence that the witness knew anything about the structure of the "Olympic" or the kind of anchor. It is entirely speculative. It is just simply like anybody making a guess.

The Court: I have been trying to follow it. I would like to have counsel state the materiality.

Mr. Adams: The materiality, if the Court please, is to demonstrate that since the stern anchor of the "Olympic" was severed, and since the bow anchor was not severed, that the bow anchor was not

(Testimony of Syunzi Sato.)

dragged and that the stern of the "Olympic" [880] swung in an arc.

Mr. Cluff: How can he tell whether the bow anchor was dragged or not?

Mr. Adams: I am asking him, in his opinion, whether he thought the "Sakito", after hitting the "Olympic", could have dragged the bow anchor. It is expert testimony.

Mr. Cluff: He may have experience, of course, but no seaman is omniscient. Unless he can tell what sort of holding grounds they had under that anchor, whether it was stock or navy anchor. I don't see how anybody could conceivably give any testimony of value on the subject. That anchor might have been buried nine feet deep in the mud if it happened to be muddy bottom there. I don't know.

The Court: Well, I am going to admit it for what it is worth, and I don't think it is worth much.

Mr. Adams: Read the question, please, to the witness.

(Question read by the reporter.)

A. I don't think that that would be possible. I don't think it could be done.

Mr. Adams: Now, if the Court please, as I have previously indicated yesterday, Mr. Bischof has to leave, and I have arranged for other witnesses to be here at 11:30. I don't know whether he is here yet or not.

Could you continue, Mr. Bischof, for a few moments?

(Testimony of Syunzi Sato.)

The Interpreter: Yes, sure.

Q. By Mr. Adams: Now, Captain Sato, I show you a roll of [881] graph paper and ask you what this is?

A. That is the ship's course record.

Q. Is that the course recorder which is connected with the gyro compass? A. Yes.

Q. Will you interpret this record for us, Captain Sato, and tell us what this continuous red line which is on a line of the graph paper marked "340" indicates?

A. That is the ship's course in that distance.

Q. And what does that indicate that the ship's course was? A. True 340 degrees course.

Q. That line is zigzagged. Can you explain why it is that way?

A. It depends on the helm, shaking of the helm or the wind and tide, and, naturally, the stem of the ship is always moving back and forth.

The Court: And that, following a 340 true, that means that according to the graph it was traveling 340 true, does it not?

Mr. Adams: Yes, and according to the gyro compass.

The Court: And the compass.

Mr. Adams: Yes.

The Court: But the checkup showed that it was not actually; in other words, they had to adjust it because of the shifting of the boat from one point to another; that is—— [882]

(Testimony of Syunzi Sato.)

Mr. Adams: If the Court will conceive the course to be a heading—

The Court: I know, but what I am getting at, for instance, this map that shows indicates different places that they have taken their bearings—

Mr. Adams: Yes.

The Court: —and found that they were off their course.

Mr. Adams: No; I disagree with the Court's interpretation. They were not off their course.

Mr. Cluff: I think he is right, Judge. Let's see if I can't make it clear.

The Court: Just a minute. Let me have this last map so I can understand it.

Mr. Adams: What I was going to ask—

The Court: Well, go ahead, gentlemen. Go ahead.

Mr. Adams: I was just going to make this statement: If the Court will conceive a course to indicate heading.

The Court: Yes; I understand that.

Mr. Adams: Then the heading was constant 340 degrees true.

The Court: Yes.

Mr. Adams: Now, the vessel did not necessarily actually travel in a straight line because of the effects of wind, current, tide, the normal slight errors in navigation, and many other factors that maybe other counsel can suggest.

Mr. Cluff: I think maybe you misled the Court a little, [883] Mr. Adams, by saying that—

(Testimony of Syunzi Sato.)

The Court: Where is that map we had yesterday?

Mr. Black: I think maybe I could explain it.

The Court: Where is the big map?

The Clerk: Mr. Adams has that.

The Court: I want that map we had yesterday.
Was that in evidence?

Mr. Cluff: That is in evidence; yes.

Mr. Adams: No; it was not introduced yesterday. We introduced it with the deposition of the chief officer and we were allowed to retain it in our possession. I hadn't offered it yesterday. May we have this marked now? This was marked at the time of the deposition as Yokota's —

Mr. Cluff: Yokota's 1 in evidence.

Mr. Adams: Yokota's 1 in evidence.

The Court: Now, as I understand it, that this line goes straight through is the line that they had charted for their trip?

Mr. Adams: That is correct.

The Court: And that when they got to this point which is marked "5:58" they found that they were off the line that distance?

Mr. Cluff: Yes, sir.

Mr. Adams: That they had drifted over that distance.

The Court: All right. Where does the drift show on this graph? [884]

Mr. Adams: It won't.

Mr. Cluff: It won't. You see, the ship is still on

(Testimony of Syunzi Sato.)

her heading of the 340 shown. She has her actual heading. This is the theoretical course. Actually, the ship moved enough over this way and came back again, but always on a 340 heading.

The Court: That is what I thought.

Mr. Cluff: Just simply that the course is not made good because of the sidewise drift, or for one reason or another.

Q. By Mr. Adams: Captain Sato, this graph or record purports to show only the heading of the vessel at any given time, does it not?

A. The time and the heading.

Q. Where is the time shown on the graph?

A. (Indicating): That is the time right there, 1, 2, 3, o'clock, 5, 6, 7.

Q. Between each number designating an hour—

The Court: There are ten-minute periods. He testified in his deposition.

Q. By Mr. Adams: —there are ten-minute periods, are there not, Captain? A. Yes.

Q. According to this graph, how long did the vessel continue after 7 o'clock to proceed on a course of 340 degrees true?

Mr. Cluff: Well, just a moment. To which we object upon [885] the ground that the graph speaks for itself. It is just a matter of interpretation of the graph.

Mr. Adams: This is interpretation.

The Court: It shows 7:10, doesn't it?

(Testimony of Syunzi Sato.)

A. 7:09.

Mr. Montgomery: It is a little behind here.

Mr. Cluff: If you look at that with a glass, why
7:09. A. 7:09.

Mr. Adams: Does the reporter have the answer
of the witness?

The Reporter: I have "7:09".

Q. Captain Sato, what does the graph show was
the heading of the vessel after 7:09?

A. It is the right starboard, the ship.

The Court: The what?

A. The record doesn't show that the ship went
to the right.

Q. The pen, however, on this graph, moves to
the left? A. Yes; but the opposite.

Q. Yes; I see. The change of the heading of the
vessel is to the right, but this graph records it for
its own purposes by a line to the left?

A. That is right.

Q. By the Court: It went both ways, didn't it?
Just a moment.

A. This is the 340-degree true course. [886]

Q. By Mr. Adams: And how far—

A. And this degree is 350 degrees.

Q. How many degrees to the right does the graph
show the heading of the vessel changed at about
7:09? A. After 7:09, about 10 degrees.

Q. During what period?

The Court: Now, may I ask, does that mean that
the vessel actually moved, or she was set for that?

(Testimony of Syunzi Sato.)

Mr. Cluff: It means that her head actually swung.

The Court: What?

Mr. Cluff: It means that her head actually swung to the right by the number of degrees indicated by the graph, that is, the physical structure of the ship swung. In other words, that the heading swung ten degrees.

Mr. Adams: I don't know whether I asked this question:

Q. Over what period of time does this graph indicate that the change of heading of 10 degrees took place? A. Between 7:09 and 7:11.

The Court: How does that show on the graph?

Q. By Mr. Adams: Will you demonstrate how that shows?

A. That indicates 7:11, and before she turned, at 7:09.

Q. What period of time is covered by this line running from 340 to 350?

A. A little over a minute.

Q. Now, there is another line which immediately follows, running from 350 over a little beyond 320. What does that line indicate with reference to the heading of the vessel? [887]

A. It was after the ship had stopped and the collision, and then the bow went to the left.

Q. The heading changed to the left?

A. Yes.

Q. How many degrees?

(Testimony of Syunzi Sato.)

A. About 30 degrees.

Q. What do you believe caused the heading to change about 30 degrees to the left after the collision?

A. On account of after the collision the stern swung more than the bow.

Q. The stern of what?

A. The "Olympic"—pardon me. And in addition, the sternway of the port engine was more than the starboard engine; and also the tide, the force of the tide.

Mr. Adams: Although I dislike interrupting this, I wanted to keep my promise to Mr. Bischof.

The Interpreter: That is all right, go ahead.

The Court: How soon do you have to be there?

The Interpreter: Between 12:00 and 2:00. I think I can make it.

Mr. Adams: I have another witness I can put right on.

The Court: Is he a short witness?

Mr. Adams: Yes.

The Court: Except I want to try and get as much with this witness in my head at one place.

The Interpreter: You go right ahead. [888]

Mr. Adams: I am sorry. It will only occur at this time, if the court please.

The Interpreter: You go right ahead.

Mr. Adams: Well, I have told this witness that I would put him on.

The Court: The only thing, I would prefer to go

(Testimony of Syunzi Sato.)

ahead if possible, because it keeps some continuity in my mind.

Mr. Adams: Could we, if the court please, take about 5 minutes with this witness after 12:00?

The Court: We will take it at 5 minutes to 12:00 if it will only take about 5 minutes.

Mr. Adams: Yes; I think it will only take about 5 minutes. Now, what was my last question?

(Record read by the reporter.)

Q. What do you mean about the stern force of the starboard engine being more than the stern force of the port engine?

A. The revolutions were more.

Q. Is that shown in the engine room log?

A. Yes.

Q. Can you by referring to the engine room log indicate what you mean by that? A. I can.

Q. Please do so.

A. That is the revolutions of—the record of the revolutions at 7:09, both engines. [889]

Q. May I get that just a minute, please? You are pointing now to an entry which shows the recorded revolutions of both the port and starboard engine at 7:09, is that correct? A. Yes.

Q. Do you have a record now of the recorded total revolutions on those two engines at 7:11?

A. Right there.

Q. How many revolutions did the port engine turn during that interval of time between 7:09 and 7:11? A. About 150—exactly 150.

(Testimony of Syunzi Sato.)

Q. How many revolutions did the starboard engine turn during that period? A. 120.

Q. Now, you believe that that change in revolutions had what effect on the heading of the vessel?

A. That was the one reason the port went—the bow went to port.

Q. In other words, that was one of the contributing factors to account for this change of heading shown on this graph by a line from 350 to a little beyond 320, is that correct?

A. Not for that reason. As I already explained to you, as I have already explained to you, the reason of that change was caused by all of those factors.

The Court: Is that the result of his order? [890]

Mr. Adams: Well, no. They don't execute the same—they can't execute the order on both engines simultaneously.

The Court: No. What I am getting at is this: The change, the degree change there, starting at 7:09, was that the—

Mr. Adams: Yes; that was the hard starboard.

The Court: I understand that was completed in a minute or less than a minute, wasn't it?

Mr. Adams: Well, just about, as nearly as we can compute it here.

The Court: Yes.

Mr. Adams: I believe he testified that it shows that the heading was changed during the course of about a minute.

(Testimony of Syunzi Sato.)

Mr. Cluff: It looks to me like a good minute and a half, but that is a matter of interpretation.

Mr. Adams: One would have to be very—

Mr. Cluff: I had it photostated and I tried to draw the thing up that size, but the pen is so wide that in the photostat it shows a line like that and it is very hard to figure.

The Court: Well, a very short time, anyhow?

Mr. Adams: Yes; that is correct.

Q. We have explained, have we, Captain Sato, what caused the change of heading from 350 to a little beyond 320?

A. As I have already explained to you, to your first [891] question.

Q. Then, the next change of heading shown on the graph is from about 319, I take it, over to 330. That indicates, does it not, a change in heading to the right of about 10 degrees?

A. How many degrees?

Q. 10. A. Yes. Yes.

Q. How do you account for that change?

A. The ship had absolutely stopped, and that must have been for the reason of the tide or the wind.

Q. Where was the ship stopped?

The Court: Where on that does it show that the collision occurred?

Q. By Mr. Adams: Where, Captain Sato, according to this graph, do you believe the collision occurred?

(Testimony of Syunzi Sato.)

A. In that position there (indicating).

Mr. Adams: Let the record show the witness is indicating—

Mr. Cluff: Extreme end of the swing to a little beyond 350.

A. Right in that, in that neighborhood there, indicating.

Q. By Mr. Adams: The first swing from 340 to 350 at between 7:09 and 7:10?

A. The time was exactly 7:10½. The time was 7:10½, but according to the graph here, it shows about [892] in that neighborhood there.

Q. The time of the impact was 7:10½?

A. Yes.

Q. Will you continue explaining?

The Court: What does he mean by the time of the impact? Does that mean at the time it actually hit the vessel?

Mr. Adams: Yes.

The Court: And not the time that they completed tearing a hole in it?

Mr. Adams: No; right at the time of the impact.

Q. Will you continue to explain why the vessel changed its heading from 320 over to 330 and then back to the left again for a few degrees and then back to the right over to 360?

A. The reason for that one is the ship had absolutely stopped, it was not moving, and the engines were still on a little bit, and I would not know at that time which way the ship would swing.

The Court: Well, gentlemen, I think that we will excuse the interpreter now and this witness. I would like to start in at 1:30, gentlemen, because I want to adjourn tonight at 4:00 o'clock. Can you have witnesses here?

Mr. Adams: I think the witness will take 5 minutes.

The Court: Let us put on this witness now.

Mr. Adams: All right.

The Interpreter: If I can get back at 1:30 I will be [893] here.

The Court: As soon as you can come back, you had better come, because they may need you.

Mr. Adams: I will call Owen Durkin to the stand, please. [894]

OWEN E. DURKIN,

called as a witness on behalf of respondents, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. Owen E. Durkin.

Direct Examination

Q. By Mr. Adams: Mr. Durkin, you are the manager of the Marine Lookout Exchange of the Los Angeles Chamber of Commerce, are you not?

A. The Marine Exchange.

Q. The Marine Exchange? A. Yes, sir.

(Testimony of Owen E. Durkin.)

Q. The Marine Exchange maintains a lookout service at the harbor, through which it ascertains the arrivals and departures of vessels at Los Angeles Harbor, is that correct?

A. Determines arrivals and departures.

Q. That is determined in what manner, by what means? A. By visual observation.

Q. Where is that lookout station located?

A. On top of the Municipal Warehouse No. 1, just to the west of the main channel entrance to Los Angeles Harbor.

Q. Is that lookout maintained 24 hours a day?

A. 24 hours a day, 7 days a week. It is constant.

Q. Was that true during September, 1940?

A. Yes. [895]

Q. During the entire summer of 1940?

A. Yes, sir.

Q. Is a record maintained of arrivals and departures of vessels which are ascertained in that manner? A. Of every vessel arriving.

The Court: Gentlemen, can't you stipulate as to what these records will show?

Mr. Cluff: I don't know what he wants, but I will stipulate.

The Court: I presume it is the time the "Sakito Maru" was in.

Mr. Adams: No. I will tell you, if the court please.

Mr. Cluff: Tell me what you are trying to prove and maybe we can save some time.

(Testimony of Owen E. Durkin.)

Mr. Adams: I am going to prove in this manner the number of vessels since May 10, 1940, that entered Los Angeles Harbor from the south and the number of vessels, other than coming up from San Diego, I mean coming up from the Canal, and the number of vessels leaving Los Angeles Harbor bound for southern ports.

The Court: All right; you may proceed.

Mr. Cluff: Just ask him, or you tell us what it is, and if Mr. Durkin confirms it I will stipulate to it. Let us not take time with formal questions and answers.

Mr. Adams: Very well.

Q. Mr. Durkin, those records are maintained in the form [896] which you have in this bound volume, is that not a fact? A. Yes, sir.

Q. And is the point of destination ascertained by your service?

A. By the published record of schedules, plus—and confirmed in connection with the agencies of the lines, the operator or agent of the line here.

Q. In other words, the man on duty confirms from the agent or the operator the destination of the vessels? A. That is right.

Q. And is the last port of departure ascertained in the manner—

The Court: Counsel has offered to stipulate if you will tell him the figures.

Mr. Cluff: Yes; just give us the figures.

The Court: At 12:00 o'clock, gentlemen, I am

(Testimony of Owen E. Durkin.)

going to take an adjournment until 1:30 and if you don't finish up between now and 12:00 this witness is going to have to come back.

Mr. Adams: Well, I have laid the foundation now, if the court please. I propose——

Mr. Cluff: Let me ask you how many ships came in——

Mr. Adams: Would you mind letting me tell you what I am trying to prove?

Mr. Cluff: Oh, I beg your pardon.

Mr. Adams: This witness did not make a search of these [897] records. I am endeavoring to identify the records, and the search was conducted by another witness, whom I will put on. But I have now laid the foundation and traced the manner in which these records were maintained, so the other witness can take the stand and testify that he has searched them and can tell the number of vessels coming in from the south.

The Court: You are satisfied that the record was kept as counsel has stated?

Mr. Cluff: I am satisfied with anything Mr. Durkin states that his record shows.

The Court: All right.

Q. By Mr. Adams: Your records state the information that you have described, do they not?

A. Yes, sir.

Mr. Adams: That is all, Mr. Durkin.

The Witness: Fine.

Mr. Adams: Thank you. Unless you have some questions?

Mr. Cluff: No, no questions.

The Court: All right. We will take our recess until 1:30. If you have any other witnesses, have them here at that time, gentlemen, any short witnesses.

(Recess until 1:30 o'clock p. m. of this day.) [898]

Afternoon Session

1:30 o'clock

SYUNZI SATO

recalled.

Direct Examination

(Resumed)

Mr. Adams: Would the reporter please read the last question and answer of this witness if he can locate it?

(Record read by the reporter as requested.)

Mr. Adams: I wonder if you would read the last portion of that answer again?

(Last part of answer read by the reporter again.)

Q. When you say that the engines were still on a little bit and you did not know which way the vessel would swing, in what direction were the engines turning?

A. What time are you referring to now?

(Testimony of Syunzi Sato.)

Mr. Adams: I realize now that he perhaps does not know what we are talking about.

Q. I direct your attention again, Captain Sato, to the lines shown on this compass graph, running from a point a little beyond 320 over in zigzag fashion to about 360. Will you explain again why the heading of the vessel was changed in the fashion shown on that graph, if you know?

A. You mean the direction of the vessel as indicated on the graph here? [899]

Q. Yes. A. What that means?

Q. Yes. Can you account for the change of heading of the vessel as shown on that graph to bring it here?

A. That, I think, on account of the tide and the wind.

Q. Well, commencing with the line over here at a little beyond 320?

A. That is where the ship stopped swinging, and then according to the tide, why, it started to swing the other way gradually.

Q. About where on this graph, if you can locate it, would the heading of the vessel be when the anchor was dropped?

A. Right about in that neighborhood.

Mr. Adams: Let the record show the witness is indicating the point where the—

A. 335 degrees.

Mr. Cluff: A heading of 335 at what time?

A. In that neighborhood.

(Testimony of Syunzi Sato.)

Mr. Cluff: Yes.

A. That is when I dropped the anchor.

Mr. Cluff: Will you fix the time as shown by the graph?

Mr. Adams: As shown by the graph——

Mr. Cluff: 7:19 was the time.

Q. By Mr. Adams: Will you fix the time, Captain Sato, as shown by that graph?

A. According to the clock it was 7:17. [900]

Q. What was it according to the graph as he shows here?

A. That is right in that neighborhood, right there.

Q. And that was where the red line intersects with course 335 or compass direction 335?

A. At that time I didn't look at the compass.

Q. No. But that is the time as shown on the graph where this red line made by the ink pen intersects the compass direction 335, the line showing it?

The Court: May I ask counsel what difference does it make so far as this case is concerned? Where is there any materiality?

Mr. Adams: From then on I was going to say that all changes were made when the vessel was anchored.

The Court: I know, but you should have said that before. He has told you about the maneuvering of the boat and the graph shows the picture of it there, and after the point of impact the rest of those markings, it seems to me, are immaterial.

(Testimony of Syunzi Sato.)

Mr. Cluff: Well, not entirely so.

The Court: Well, you people are going to have to teach me some lessons on the materiality. I think I can see what is right and what is wrong. Some of these technical differences between you gentlemen are going to be pretty hard for this court to understand as to any detail after the collision was all over.

Mr. Adams: I will discontinue my questions along that [901] line in view of the court's comments. May I have the deposition of the chief officer, Yokota, please?

Mr. Cluff, do you recall that attached to that deposition is a photostatic copy of this chart?

Mr. Cluff: Yes.

Mr. Adams: Do you have any objections to the photostatic copy being introduced in evidence and our retaining the original?

Mr. Cluff: Why not put the original in?

Mr. Adams: Pardon me?

Mr. Cluff: I think the original will be more satisfactory. There is no reason, no operating reason why it should not go in evidence, is there?

Mr. Adams: It is in evidence, this photostatic copy.

Mr. Cluff: I mean, let us put the original in.

Mr. Adams: Will you cooperate with me in letting it be withdrawn from evidence after the case is decided?

Mr. Cluff: Oh, sure.

Mr. Adams: I will offer, then, the entire roll of

(Testimony of Syunzi Sato.)

graph recording in evidence. May the record show that the navigating chart which the Captain has been referring to from time to time was attached, or rather, it was offered into evidence at the time the deposition of Mr. Yokota was taken? And I renew my offer at this time. I offer this chart into evidence.

The Court: That is the one we could not find the other [902] day?

Mr. Adams: No. That chart that your Honor is speaking of is one attached to the deposition of Lieut. Hewins. This chart I have always retained in my possession, with the permission of counsel, since the deposition.

The Court: Then it will be introduced into evidence now.

Mr. Adams: Yes. It was already offered at that time, but I renew my offer.

The Court: All right.

Mr. Adams: It is already marked as Yokota's Exhibit No. 1 in evidence. Whether any further marking at this time is necessary or not I don't know.

The Court: You had better give it a new marking.

The Clerk: The graph will be "Sakito's" Exhibit J, and this chart will be Exhibit K.





RADAR/SONAR

The schedule of operations and Lead Line

Station American Island Lighthouse On 1 March 1943

Los Angeles Harbor Lightship On 1 March 1943

Point Loma Lighthouse On 1 March 1943

Differences in present normal compass variation in the vicinity of San Diego

Local Magnetic Variation

CART

Temporary chart
which have been
used in the preparation
and are being
used in the preparation
of the permanent chart.D
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(Testimony of Syunzi Sato.)

Q. By Mr. Adams: Captain Sato, you left the anchorage grounds right around noontime, did you not? A. Yes; about noontime.

Q. And you proceeded from the spot where you had been anchored to the outer harbor of Los Angeles Harbor, did you not? A. Yes.

Q. And after anchoring there for a short time you then proceeded into the Bethlehem shipyards and came alongside the dock, did you not? [903]

A. Yes, sir; I was there a little while.

Q. After you docked at Bethlehem shipyards did you cause an inspection to be made of the damage done to the bow of the "Sakito Maru"?

A. Yes.

Q. I show you a photograph which is already in evidence, marked Yokota Exhibit No. 9, and ask you if that photograph is a fair representation of the damage, apparent damage done to the starboard bow of the "Sakito Maru"? A. It is.

Q. I show you another photograph attached to the same deposition, which is marked Yokota 10, and ask you if that is a photograph of the port bow of the "Sakito Maru"? A. It is.

Q. And is that a fair representation of the apparent damage done to the port bow of that vessel? A. It is.

Q. Did you after the vessel arrived at the Bethlehem yards, cause measurements to be made of the distance from the stem, of the damage that was done to both bows? A. Yes.

(Testimony of Syunzi Sato.)

Q. How far back did the damage extend from the stem on the port bow?

Mr. Cluff: Just a moment. Did the Captain make the measurements?

Q. By Mr. Adams: Did you make the measurements yourself, [904] Captain Sato?

A. No; I did not.

Mr. Cluff: Well, go ahead.

Q. By Mr. Adams: Who did you direct to make the measurements?

A. The chief officer, he measured it.

Q. Did the chief officer then come and report back to you the results of his measurements?

A. Yes.

Q. Will you tell us what he reported to you was the measurements of the damage on the port bow from the stem of the "Sakito"?

Mr. Cluff: I will waive the objection to hearsay.

The Court: It is pure hearsay, counsel.

Mr. Adams: If the court please, I think it is done in the interests——

Mr. Cluff: I will waive the objection, your Honor.

The Court: You say you waive the objection?

Mr. Cluff: Yes.

The Court: All right.

A. About 16, 16 feet.

Mr. Cluff: On the port bow?

Mr. Adams: On the port bow.

(Testimony of Syunzi Sato.)

Q. There was no exterior evidence, then, on the hull of damage aft 16 feet from the stem, is that correct? A. No; there was no other. [905]

Q. How far back from the stem was there apparent damage on the starboard bow?

A. About the same.

Q. About how high above the water line was the damage on the starboard bow?

A. About 6 feet.

The Court: I didn't get his answer.

Mr. Adams: About 6 feet.

Q. Did that extend clear to the top of the top-most apparent damage?

A. About 10 feet to the top.

Q. I see. What was the furthest point above the surface of the water that damage was apparent on the port bow of the "Sakito"?

A. The furthest?

Q. Yes. What was the furthest extent?

A. About the same.

Q. About 10 feet? A. Yes.

Q. At a point 16 feet abaft the stem on both sides and extending from the water level up to about 10 feet what was the width of the "Sakito", the greatest width in that area?

Mr. Cluff: Have you any kind of a plan of the ship here?

Mr. Adams: I have a drawing, but it does not show that particular width. It is a drawing of the—

(Testimony of Syunzi Sato.)

Mr. Cluff: I mean, haven't you any blueprint? [906]

Mr. Adams: No.

Mr. Cluff: Any construction or loading plans of the ship at all?

Mr. Adams: No; we haven't. Did you ever ask for any, Mr. Cluff?

Mr. Cluff: No; I don't think I did.

A. I cannot give you—I don't remember the positive width. I think about 15 or 16 feet.

Q. By Mr. Adams: Captain Sato, there is a rake, is there not, to the bow of the "Sakito Maru"?

A. "Rake", what is rake?

Mr. Adams: I will withdraw the question.

Mr. Cluff: Maybe you can demonstrate it on a photograph.

Q. By Mr. Adams: From the water line of the stem, the extreme prow of the vessel overhangs, does it not? A. Yes.

Q. How much does it overhang?

A. I cannot give you any—I don't remember the positive.

Q. What is your best estimate?

A. A little less than 10 feet, possibly.

Q. In other words, if you dropped a line from the extreme prow of the "Sakito Maru" to where it would touch the water, that point where it touched the water would be 10 feet from the stem at the water level, is that correct?

A. Yes; I think so. I have never measured it. [907]

(Testimony of Syunzi Sato.)

Q. That is your best estimate? A. Yes.

Q. Does that same degree of rake continue beneath the water level to the keel?

A. No; that would not be because the ship does not go straight down. It goes off into an angle.

Q. I show you two drawings and I ask you what these drawings are? I show you one, first, and I will ask you what that drawing is.

A. This is the forward part of the ship.

Q. What does it show, which side?

A. Port side.

Q. Who made it? A. Second officer.

Q. When was it made?

A. Possibly, maybe the next day or the following day to that. I am positive, of the collision.

Q. Of the collision. Does that drawing indicate the damaged portions on the port bow?

A. Yes.

Q. Is the drawing a fair representation of the bow line from the immediate top to the bottom of the keel? A. Yes; it is.

Mr. Adams: I offer that drawing in evidence.

Mr. Cluff: Well, I think it is objectionable but I won't object. Go ahead and put it in. [908]

The Clerk: Exhibit L.

山河十九復舊

PORT side side - bow end.

1138-134 Adm

L
Forecastle

SEP 1 1941

1138-134

Forecastle store

Boatswain store

Collinson Bulkhead

2nd Deck

3rd Deck

7.50 m
water line

183

179

175

17

No. 11115
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED

JUL 18 1942

PAUL P. O'BRIEN,
CLERK

(Testimony of Syunzi Sato.)

A. I want to see something.

Q. By Mr. Adams: What is it, Captain, you wish to see? A. Show me the drawing.

Q. Referring to "Sakito's" No. L, do you wish to make some statement with reference to it?

A. According to the measurements of the width and the height, as indicated on the drawing, I cannot give you any correct measurements on that.

Q. Well, on what—

A. These are just approximate. These are all approximate measurements.

Q. Is that drawing to scale?

A. Yes; it is. The ship's officer is not an expert on making drawings; so I cannot give you any correct or exact measurement.

Q. What do these different colored portions show?

A. That is the damaged part.

Q. What does the red colored portion show?

A. Where it was cut.

Q. A hole punctured in the hull? A. Yes.

Q. And what does the brown show?

A. Where it was dented.

Q. I show you another drawing and ask you what that drawing shows? [909]

A. That is the starboard side.

Q. Is that also drawn to scale?

A. Yes; it is.

Q. Now, there are different colored crayons used on it.

(Testimony of Syunzi Sato.)

The Court: Is it hardly fair to say it is drawn to scale when he says the man who drew it is not an expert? It is rather unfair to everybody to assume that it is drawn to exact scale in view of that testimony.

Mr. Adams: Yes. I don't want to be committed to that extent and I don't wish to give that impression, either.

Q. There are different colored crayon marks shown on that. What does the pink indicate or red?

A. You mean the big round circle, pink circle?

Q. Yes.

A. That is where there was a hole made.

Q. Then the other colored crayon which is brown, what does that indicate?

A. Dented portions. That is where it was bent.

Q. By the Court: Does it indicate that there was damage done way down here?

A. Yes; that was dented.

Q. By Mr. Adams: About how far below the water line? A. About 7 or 8 feet.

Q. Was there any damage done to the immediate stem?

A. Yes. It is indicated there with a mark.

Q. Was the stem bent? [910]

A. A little bit.

Q. In which direction?

A. Practically straight. [911]

Q. Is that shown in this photograph which is Yokota's No. 9? Will you point it out?

(Testimony of Syunzi Sato.)

A. Indicating.

Q. Indicating on a level with the two holes shown in that photograph, but right at the immediate stem. Captain Sato—just a minute.

I will offer in evidence the diagram or drawing that the witness has last identified, showing the starboard side of the "Sakito Maru".

The Court: Admitted.

The Clerk: "Sakito" Exhibit M.

f 1 4 2 U. S. T. S.

No. 113944

Batho - M

No. M
SEP 1 9 1941

STREET SIDE scale too

barnacles stored

salmon stored

1 1/2

750

171

175

179

183

No. 16100
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED

JUL 13 1942

PAUL P. O'BRIE

(Testimony of Syunzi Sato.)

Q. By Mr. Adams: When the "Sakito" struck the "Olympic", just at the time of impact what was the angle of the axis of the "Sakito" with reference to the port side of the "Olympic"?

A. Very close to right angle.

Q. How far is the bridge from the stem of the "Sakito"? A. 65 meters.

Mr. Adams: You may cross examine.

Cross-Examination

Q. By Mr. Cluff: Captain, your forward draft was 27 feet 7 inches; that is right?

A. You mean the draft?

Q. The draft, yes; forward draft on the date of the collision? [912]

A. I cannot give you the exact figures in feet, but I will give it to you in meters.

Mr. Cluff: Will you stipulate that was the draft?

Mr. Adams: 24 feet 7 inches.

A. 7 meters and a half.

Q. By Mr. Cluff: Captain Sato, looking at the two drawings, L and M, "Sakito's" L and M, what are these vertical lines?

A. That is frame of the ship.

Q. Frames of the ship, yes. And the line drawn beyond the bow in a parallel with the deck, what is that line? A. Water line.

Q. Is that the water line as it lay in the water at that time, or the marked water line?

A. At the time that it was in the water.

Q. Do you know how wide apart the frames are?

A. I do not remember definitely.

(Testimony of Syunzi Sato.)

Q. Captain, as a matter of fact, on the starboard side back to the after hole on the starboard side, wasn't that, as a matter of fact, 23 feet and 3 inches, or 23 feet?

Mr. Adams: Wasn't what?

Mr. Cluff: The distance of the hole from the bow?

A. No; I don't think it was that much.

Q. Captain, have you any record now of the chief officer's report? [913]

A. I haven't got it with me.

Q. Was there ever any record made of the chief officer's report? A. This is the record.

Q. I thought you said this was made by the second officer?

A. The second officer made the drawing—the chief officer made the drawing, and on the investigation of the—the second officer made the drawing, and upon the investigation the chief officer, he made the measurements himself.

The Court: I don't think that counsel should take a great deal of time cross examining on these measurements, in view of the fact that the witness' testimony, while it has been admitted, was purely hearsay, if there is other evidence that may be of a more positive nature, because I will certainly accept a positive measurement by somebody who measured it rather than this character of testimony.

Mr. Cluff: To save some time on that, Mr. Adams, have you a survey report of the damages here that

(Testimony of Syunzi Sato.)

you would care to compare with mine out of court here sometime?

Mr. Adams: I will do it, rather than to delay now to look it up. If you will proceed with your questioning, I will see if I can locate it.

Q. By Mr. Cluff: Captain, you said that the angle of the collision was about a right angle. It was not an exact right angle, was it? [914]

A. It was about a right angle.

Q. About a right angle. Can you tell me whether the smaller side of the angle was to the right or to the left of the "Olympic's" 'midships.

A. No; I couldn't tell you that. I don't know what you mean.

Q. See if I can fix it this way: (Diagramming on paper with models of boats.) Let's use the small models. It is just the same. Captain, will you show the angle of the "Sakito Maru" with the port side of the "Olympic" at the moment of impact?

A. I can't. I think about in that manner.

Q. About in that manner. Will you fix it again, Captain, as best you can, so we will be sure of it?

A. I cannot give you it correctly.

Q. Just as well as you can, the best you can, Captain, that it all we ask.

(Witness arranging models on paper.)

Mr. Cluff: In case I slip, indicating a 10 or 15 degree angle to the left of a perpendicular.

Mr. Adams: I think you had better draw it.

(Testimony of Syunzi Sato.)

Mr. Cluff: Well, I am going to draw it, but I just wanted to be sure in case the thing slipped.

(Mr. Cluff diagramming on paper around models placed by the witness.)

I will mark this "Sakito". [915]

Q. Now, you are sure that the stern was to the left of the perpendicular, and not to the right?

A. At that time I believed that it was in that form.

Q. That is just at the time she hit?

A. Yes.

Q. Now, Captain, this is the starboard side. That last hole is between the 10th and 11th frame—right?

A. I don't remember the exact number.

Q. Well, count them.

A. That is No. 10—or 9 (indicating), No. 9.

Q. All right, 9th and 11th frame? A. Yes.

Q. Now, on the port side, between the 8th and 9th frame? A. Yes.

Q. So the damage was much farther aft on the starboard side than on the port side?

A. Yes; a little, it was.

Q. Wouldn't that indicate to you, Captain, that she had swung on an angle to the right and not on an angle to the left? A. No; I don't believe so.

Q. How do you account, then, for the fact that the hole on the starboard side is several feet farther aft than the hole on the port side?

A. Do you want me to explain that? [916]

(Testimony of Syunzi Sato.)

Q. Yes, please.

A. The ship would hit at that angle (illustrating), and, as you saw a short while ago, according to the course record and at the time that the ship hit, it instantaneously stopped; and then after that the head swung in this manner. That is why the holes appeared on the starboard side.

Q. So you think the swinging of the ship was enough of itself to put the starboard bow into the "Olympic's" side two or three feet beyond the port bow?

A. No; after it had entered the "Olympic", and instantaneously the ship stopped and, as it hit and went into the "Olympic", at the same time, instantaneously, the ship stopped and the bows stopped and the momentum of the ship stopped, and then she started to swing to starboard.

Q. All right. Captain, will you indicate on this drawing we are using here—I am placing the model now right on top of the mark showing the "Sakito" at the moment of the impact—will you move the model to the position to which she swung at the end of that 30 degree swing, the swing of the stern to starboard which immediately followed the impact?

Mr. Adams: I think he needs another model to move the "Olympic" at the same time.

Mr. Cluff: Well, just with reference to the "Olympic". Let us leave the "Olympic" where it is.

Q. I want to find out where the "Sakito" was

(Testimony of Syunzi Sato.)

with [917] reference to the side of the "Olympic", not with reference to where the "Olympic" was, but with reference to the "Olympic's" side what the angle was when the swing to starboard finished. Remember, your graph shows a 30 degree swing, Captain.

A. Before we got there the swing to the right at the time of the accident stopped about there, and then after that the "Olympic" swung in that manner.

Mr. Adams: In what manner? Let the record show.

Mr. Cluff: Indicating a twist of the "Olympic's" stern to her starboard.

A. The "Olympic's" stern swung to starboard.

Q. Now, that does not just answer my question. The "Olympic's" stern swings to starboard. All right, like this. Now, with reference to the port side of the "Olympic" the impact was about like this?

A. The port side and starboard side, it wouldn't make any difference; it is all the same boat.

Mr. Cluff: Just ask him to wait until I give him the question, until he gets the whole question.

Q. After the "Sakito" struck the "Olympic" at this angle—at this angle which you have indicated, then the stern of the "Saktio" swung to starboard?

A. Yes.

Q. 30 degrees?

(Testimony of Syunzi Sato.)

A. About 30 degrees. That was not at that time [918] instantaneously. It was after it hit—

Mr. Adams: I object to the question upon the grounds it assumes facts not in evidence, because the witness has never testified that the stern of the "Sakito" swung. He said that the heading changed.

Mr. Cluff: All right. Then let us put it the heading changed.

A. Will you give me the other model of the ship?

Q. Wait a minute. I will give you another one of the same size.

A. (Witness again demonstrating with models of boats on paper.) As it went into the "Olympic" and then turned and swung and then dropped out.

Q. All right. Now let us get the end of the swing. All right, now, all right. So, after the striking of the first impact the stern of the "Sakito" swung from an angle coming in from the "Olympic's" bow over to an angle coming in from the "Olympic's" stern?

A. What do you mean by angle?

Q. Well, will you explain to him what an angle is?

A. What do you mean by an angle when you refer to that here?

Mr. Adams: If the court please, I don't think the question is very clear, because Mr. Cluff is talking about the stern swung and the witness has indicated that the stern did not swing but simply the heading of the vessel changed. [919]

(Testimony of Syunzi Sato.)

Mr. Cluff: Well, let us get at it this way here:

Q. All right, Captain, here we are at the moment of impact. Now, listen carefully, please to the interpreter. Put the two models in the position in which the two vessels were when the "Sakito" came to a stop.

A. You mean after the "Sakito" had stopped, to mark that?

Q. Yes; after she became entirely stopped.

Mr. Adams: You are talking only about when the "Sakito" stopped and not when the "Olympic" stopped?

Mr. Cluff: I am talking about when the "Sakito" stopped now, not when the—

(Witness illustrating.)

Q. Substantially a right angle there. Let us get a lead here that we can start from.

Mr. Adams: I think the record ought to show that those models are moving while the pencil is—

The Court: No; I will contradict that record on that, because counsel held that tight and made the initial marks so the models could be put back.

Mr. Adams: It seemed to me, if the court please, they were moving there.

Mr. Cluff: Mr. Adams, I will be glad—

The Court: Wait a minute. I have watched this.

Mr. Adams: I don't purport that I can do it any better, but I am just trying to indicate that I don't

(Testimony of Syunzi Sato.)

think you can [920] draw it right down to a gnat's eyebrow.

Mr. Cluff: Mark that "Sakito" 2.

The Court: Well, both counsel have been dealing with gnats' eyebrows here, so far as the court is concerned, in many respects.

Mr. Montgomery: Not our side, your Honor.

The Court: We will probably hear from you before we get through.

Mr. Cluff: I hope the court will assume that we are not just wasting the time of the court. Of course, I would not go into anything I did not think was important here.

The Court: I realize that, counsel, that neither side would do that—I hope not wilfully, anyhow.

Mr. Cluff: Do we agree that that is a fair representation of the position the witness put the model?

Mr. Adams: I will let the record speak for itself on that. I don't mean to discredit your attempt, Mr. Cluff, but it did not seem to me that you could hold him very definitely to something like that.

Mr. Cluff: Well, for what they are worth, I will offer them into evidence as the "Olympic's" next exhibit.

The Court: All right; let us turn to the next chapter then.

The Clerk: That is "Olympic" Exhibit 12.

No. 1138-1347-AW
F.R.
Olympic
10 12
U.S. NAVY
SEP 19 1941
M. J. WILSON, Clerk

No. 11
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED

111 1 : 1947

PAUL P. O'BRIEN,
CLERK

(Testimony of Syunzi Sato.)

Q. By Mr. Cluff: Captain, you say that the ordinary practice— [921] May I see the little deck log?

Mr. Adams: There is a photostat in evidence, attached to Yokota's deposition.

Mr. Cluff: Can we get the original? All right; this will do.

Q. Captain, it was the practice——

Mr. Adams: Here is the original, Mr. Cluff.

Mr. Cluff: All right. This may be a little easier to use.

Q. It was the practice on the "Sakito Maru" to log the bells on the even minute ordinarily?

A. What do you mean bells?

Q. The bells to the engine room, telegraph to the engine room. A. Yes.

Q. And on account of the great importance of the moment of the collision you instructed the apprentice officer to log it at the half minute?

A. Yes.

Q. Now, the bell at 7:09, when you first sighted the barge, was that at exactly 7:09 or was it a little earlier or a little later?

A. The signal to where?

Q. The signal to the engines at 7:09 to stop.

A. That was what? [922]

Q. Was that exactly at 7:09, or was it, say, a half a minute later or half a minute earlier?

A. I cannot give you—I don't remember that definitely.

Q. That was a pretty——

(Testimony of Syunzi Sato.)

A. It was close to 7:09.

Q. That was a pretty important time. You did not give any special instructions about logging that time, did you? A. What do you mean by log?

Q. Put it down on the memorandum?

A. At that time it was a very important event and we could not be looking at the clock all the time. We had to watch what was going on.

Q. Captain, were these entries "7:09"—or here we are—"7:09 stop and full astern", were those actually written on this piece of memorandum before or after the collision?

A. Before the collision.

Q. But the entry of 7:14—or pardon me—the entry of 7:09 then was written between 7:09, when the bell was rung, and 7:10½, when the collision occurred, is that right?

A. After. This was recorded right after the signal was given to the engine room.

Q. And before the collision? A. Surely.

Mr. Cluff: I will ask that the original scrap log—well, we have got that in. That is all right. I will offer the original scrap log as the "Olympic's" next exhibit. [923]

Mr. Adams: I will join in the offer.

The Court: It is fine that you gentlemen agree on something again.

The Clerk: "Olympic's" Exhibit 13.

[Inserted at page 829 of this printed record.]

Mr. Adams: The photostatic copy, if the Court

(Testimony of Syunzi Sato.)

please, is already in evidence as one of our exhibits.

The Court: Yes; attached to one of the depositions.

Mr. Adams: Yes.

Q. By Mr. Cluff: Captain, you said that you thought the swing of the "Sakito" to her right, the swing of the "Sakito's" stern to starboard immediately after the collision was due in part to the fact that the port engine was not turning over as fast as the starboard engine; and you base that deduction —wait a minute. I am probably getting too much question here for you.

The Interpreter: Yes. I will ask to have that read so far.

Mr. Cluff: Will you read it as far as I have gone?

(Question read by the reporter.)

A. No, that's wrong; no, it's absolutely wrong. There are no facts that the port engine was not turning as fast as the starboard engine.

Q. You told us before noon here, just before you left the stand, that between 7:09 and 7:11 the port engine turned 120 revolutions.

A. I did not say anything like that. [924]

Mr. Adams: If the Court please, I object to the question upon the ground that it assumes facts not in evidence.

A. I said the port engine was revolving 150.

Mr. Adams: I can show you the exact log.

The Court: He took it out of the log this morn-

(Testimony of Syunzi Sato.)

ing, and the witness figured it out from the log this morning.

Q. By Mr. Cluff: Captain, getting back now to the morning, before the collision, you came on deck for the first time in the morning watch after daylight at six o'clock?

The Court: The morning of the 4th?

Mr. Cluff: This is the morning of the collision.

The Court: He testified 5:58.

Mr. Cluff: Yes, the bearing was at 5:58.

A. 5:58.

Q. And did you go on deck before they finished computing the beam bearing on Santa Catalina?

A. About the same time.

Q. And I suppose you checked those computations?

A. What computations are you talking about?

Q. The computations by which the officers fixed the beam bearing off Catalina, taken at 5:58?

A. No, that's the officers' work. I didn't.

Q. Did you examine the work afterwards?

A. Yes, I looked out myself, with my own eyes, and I saw this was positive.

Q. You were entirely satisfied with the position fixed [925] for the vessel at 5:58, as marked on the chart? A. Yes, I was satisfied.

Q. Now, the theoretical course from that fix up toward the breakwater was established by this second line, that is, the line to the left of the chart, running from the 5:58 fix?

A. It is the same course as before.

(Testimony of Syunzi Sato.)

The Court: Read the question and ask him to answer it.

A. The only reason that line was drawn there was that the ship moved over from the original course to the left.

Mr. Cluff: Exactly. This was the position of the ship at 5:58?

A. Yes, I told you that a number of times.

Q. The reason that position is to the left of this line of the course from the Coronado Islands was because the vessel was set over during the night about a mile and a quarter?

A. Yes, I think so.

Q. From 5:58 until 7 o'clock you got actually an easterly set of about three-quarters of a mile to the position of the collision, is that right?

A. I think I figured that about half a mile.

The Court: I don't quite understand that question. The question is, about three-quarters of a mile easterly?

Mr. Cluff: Easterly set. That is, your Honor, computing his position from the line over here to the point of collision, which is established on this line here, about three-quarters of a mile. [926]

The Court: I see.

Q. By Mr. Cluff: A half or three-quarters of a mile is not important.

A. I want to tell you something. This line here and this line, are not parallel.

Q. Yes, I understand.

A. That line is parallel. The distance between the two lines is about half a mile.

(Testimony of Syunzi Sato.)

Q. Very well, I understand.

The Court: In other words, the boat had drifted over about half a mile from the 5:58, in about an hour.

Mr. Cluff: In an opposite direction from which it had drifted on the earlier course.

A. I think that is right.

Q. Captain, at 5:58, when you got the fix off Catalina Island, did you anticipate that you would get an easterly set?

A. I did not know that definitely.

Q. That is, the set might be either way?

A. I did not think that I would have to set it.

Q. Does he understand what I mean by the set of a current?

A. Surely, I know what you mean by set.

Mr. Cluff: May I have the answer?

(Record read by the reporter.)

Mr. Adams: "Would have to set it", if the Court please, there is something wrong with that. [927]

The Interpreter: It is my mistake.

Q. By Mr. Cluff: Will you explain to the captain that by a set, did he anticipate that his ship would drift or work over to the eastward, on account of any tide or current or any other factor.

A. At that time I did not think it would go either way.

Q. Of course, the theoretical course, the fix, from the 5:58 set, if extended, would have carried the ves-

(Testimony of Syunzi Sato.)

sel into the breakwater about three-quarters of a mile westward of the light?

Mr. Adams: I object to the question as unintelligible.

(Question read by the reporter.)

Mr. Cluff: Let me reframe that, so there won't be any question about it. The theoretical course, as plotted from the 5:58 fix, would, if made good, have carried the vessel into the breakwater about a mile or so west of the light?

A. If it had continued on that course.

Q. As you approached the breakwater, on that course, on the theoretical course, what did you propose to do to find the light, that is, to find the entrance?

A. I thought I would see it a little to my starboard.

Q. You thought you would see it?

A. I figured that I would see it a little to my starboard.

Q. You would see it a little to the starboard, and then [928] you would go in by observations?

A. After I would locate the light, or see the light on the breakwater, I would naturally have to maneuver into the breakwater, to get in.

Q. At 5:58 it was bright and clear, that is, for early morning it was clear? A. Yes, it was.

Q. No fog? You could see Catalina Island?

A. Yes, I could.

(Testimony of Syunzi Sato.)

Q. That was about ten miles away?

A. What was ten miles away?

Q. Catalina Island.

A. That was ten and a half miles, that beam distance.

Q. You could see the island clearly?

A. Yes.

Q. Could you see the mainland over on the starboard side? A. Yes, I could see it.

Q. You could also see the mainland, which must be at least fifteen or eighteen miles?

A. I don't remember that definitely. If you want it, I can give you the measurements with the compass.

Q. No; anyhow, you could see the mainland?

A. Yes.

Q. It stayed clear up until 7 o'clock?

A. Yes, it was about generally clear.

Q. When you came on the bridge at 7 o'clock it was still [929] clear on the sides, I think you said?

A. It was rather clear, yes. Some parts were not.

Q. On the sides it was clear?

A. Yes; some parts were not very clear.

Q. But hazy up ahead, about a mile or two miles ahead?

A. I think about a mile and a quarter.

Q. Could you see Catalina Island then on your port hand?

A. At 7 o'clock I did not see it any more.

(Testimony of Syunzi Sato.)

Q. Now, at 7 o'clock, you came on deck at 7 o'clock in response to a call? A. Yes.

Q. And you had given orders that you be called when the vessel was within five or six miles of the breakwater? A. Yes.

Q. Now, captain, on the chart, your navigation chart, there is a position marked on the course from the 5:58 fix which is marked 7 o'clock?

A. Yes.

Q. That was fixed by your officer? A. Yes.

The Court: Where is that 7?

Mr. Cluff: Right on this line, in this little circle, with the dot in the center. The little dot, the circle with the dot, that I am pointing to now, with the little figure of an anchor, that was the actual anchorage of the "Sakito Maru", computed after the collision, is that right? [930]

A. Yes, that is the place it was computed after the "Sakito Maru" had dropped her anchor.

Q. That is right. And that was by bearings to various places on shore? A. Yes.

Q. So that anchorage is a very definite position?

A. Yes.

Mr. Adams: In order that all the information might be before the Court, and you, Mr. Cluff, I would like to state at this time that I neglected during my direct interrogation to have the captain identify the chart in greater detail, on which various bearings were taken while they were at anchor.

Mr. Cluff: I have no doubt he took a two- to three-point bearing

(Testimony of Syunzi Sato.)

The Court: You can take it upon redirect.

Q. By Mr. Cluff: At 7 o'clock, captain, while the actual position of the vessel is marked on the theoretical course, it is probably true, is it not, that her actual position, that is, her physical position in the water, was still well to the east of that, as much as maybe a half a mile?

A. Yes, I think it did go to the east.

Q. And that would be due to the set of the current, probably?

A. Yes, I think so.

Q. From the 7 o'clock position to the place of anchorage was a trifle over two miles; about two and one-eighth miles? [931] Will you check me on that? A little less than two miles? Try it again. Mr. Adams, have you dividers?

A. Two miles.

Q. That is close enough.

A. I want to explain something. The position at 7 o'clock, that is the position of dead reckoning from 5:58.

Q. Yes.

A. Now, as to the actual definite position of the ship, whether it was here, or a little to the side, or to the back, or to the left, I couldn't give you definite.

The Court: I understand that he fixed that place at 7 o'clock by reason of the mileage she covered.

Mr. Cluff: He has the mileage, the 5:58 mileage from the cross bearing at 8:24.

A. I want to tell you some more. This position

(Testimony of Syunzi Sato.)

is taken two points, the angle being very sharp, it is not very correct.

Q. At any rate, the beam bearing at 5:58, that is a good fix? A. Yes.

Q. Captain, from 7 o'clock, when you came on the bridge, until 7:03, you were proceeding at 16 knots over the ground?

A. 16 miles—16 knots.

Q. At 16 miles, you would proceed, from the 7 o'clock position, just .8 of a mile, is that right?

A. What do you mean by .8 of a mile? Up to what? [932]

Q. How far would you go between 7 and 7:03? Figure it out any way you want to.

A. Three-quarters.

Q. Three quarters of a mile? A. Yes.

Q. That is close enough. Will you take the chart? Find the 7 o'clock theoretical position, as established on the theoretical position for 7:03? Hold the point there. I will draw a little larger circle around there, and mark it with an arrow, so as not to confuse it with the other marks on the chart, "7:03". Now, at 7:03, captain, you ordered the engines from full ahead to slow ahead—both engines? A. Yes.

Q. And you told us yesterday that it would take you about three minutes to decelerate the speed of the ship?

A. Do you mean from the full to slow?

Q. From full speed to slow, about three minutes? A. Yes.

(Testimony of Syunzi Sato.)

Q. So during the three minutes, it is fair to say that the average speed of the ship during the whole three minutes was about 11 knots, is it?

A. That I don't know, because it gradually decreases.

Q. Of course, it gradually decreases. You started at 16, and ended up at 6, so it would be about 11, wouldn't it?

A. I don't know whether it would be 10 miles or 11 miles.

Q. Captain, will you figure, by dead reckoning, how far [933] you would go in those three minutes, while the ship was decelerating, and figure it any way you want.

A. What do you mean, the distance to where?

Q. The distance from 7:03 to 7:06, when the engine was fully decelerated?

A. Can I figure it now?

Q. Yes, any way you want to.

(Short recess.)

Q. Captain, have you been able to compute the speed of the "Sakito Maru" during the three minutes while the engines were decelerating?

A. Half a mile. That is for 10 miles. 10 miles it would be 5.5.

Q. What do you think the speed was, 10 or 11, the average speed? A. That I don't know.

Q. Let's take an average and call it $10\frac{1}{2}$.

The Court: He says 10.

Mr. Cluff: I will take his figure.

A. Half a mile.

(Testimony of Syunzi Sato.)

Q. Will you put down, starting from the 7:03 position, which you have marked on the chart here,—will you fix the half mile?

A. Can I explain it?

Q. Yes.

A. According to this chart, the scale is too large, and [934] it might be a little incorrect.

Q. Yes, it would probably be a little incorrect.

A. About; approximately.

Q. Just approximately, yes. I will draw a circle around it, with an arrow, and mark it 7:06. Now, captain, while this position you have fixed is on a theoretical course, it is fair to assume, is it not, that the actual course, that is, the actual position of the ship, at 7:06, was about on a course of 340 true, about a half a mile to the eastward?

A. That is the position of the ship.

Q. So the actual position of the ship, instead of being here where we have drawn the 7:06, the theoretical position, it was actually on a line of about 160 degrees true from the breakwater? [935]

A. I don't know anything about that. How can I know that?

Q. This is a fair statement, isn't it, Captain: By dead reckoning from the position of 5:58, the definite fix at 5:58, you had gone about $16\frac{1}{2}$ miles over the ground to the 7:00 o'clock position?

Mr. Adams: I object to the question upon the ground that the witness has already indicated that he cannot speak with definiteness about these mat-

(Testimony of Syunzi Sato.)

ters, because that position at 7:00 a. m. was fixed by dead reckoning, and it might vary.

Mr. Cluff: He has explained that fully.

The Court: He is not getting anything as close as you lawyers are. He isn't getting it down to a gnat's tooth.

Mr. Cluff: I know he isn't getting it down to a gnat's tooth. I am wanting to get it as near to a gnat's tooth as I can.

Q. Now, Captain, according to the way you gentlemen in the Japanese merchant marine calculate visibility, what visibility did you have—what is the minimum visibility when you say the weather is clear?

A. Do you mean from the bridge, when the weather is clear?

Q. When you make a notation in the log that the weather is clear, what would be the minimum visibility on which you would make that entry?

A. When we record it as clear, it is not only visibility, but it also refers to the condition of the sky.

Q. Let us put it this way: Suppose there was a sort of a haze, but you had visibility 5 miles, would you put that down as clear or foggy?

A. We would insert that as misty.

Q. So that it would take a visibility of more than 4 miles through a haze before you would say it was clear?

(Testimony of Syunzi Sato.)

A. There is no positive mileage there, whether it is 4 miles or 5 miles, to determine the visibility.

Q. Captain, when you came up on the bridge at 7:00 o'clock, or shortly thereafter, your chief officer was in charge of navigation?

A. Up to 7:00 o'clock.

Q. And then you came on the bridge and took over? A. Surely.

Q. What was the first thing you did when you arrived on the bridge?

A. Surely, as soon as I got up on the bridge, I looked out.

Q. You took a look at the weather?

A. Yes, I did.

Q. And is that when you ascertained the visibility, as you testified yesterday?

A. Yes, generally.

Q. And did you consult with your chief officer, inquire as to what his estimate of the visibility was? [937]

A. Did I? I did not consult him.

Q. You did not consult with him?

The Court: Did they have an instrument to test visibility?

Q. By Mr. Cluff: Captain, you don't have any instrument to test visibility?

A. I never heard of such a thing.

Mr. Cluff: I did not, either.

The Court: I thought you used that expression.

Mr. Cluff: No, I asked him if he checked with the chief officer to ascertain his view of visibility.

(Testimony of Syunzi Sato.)

Mr. Montgomery: He said estimate.

Mr. Cluff: Estimate, I think, is the word I used. So you did not consult with your chief officer about the visibility at all?

A. I have already told you I did not consult with him.

Q. Had the 7:00 o'clock position been marked on the chart when you came on the bridge, or was that done while you were there?

A. I don't remember that definitely, but the chief officer made that notation.

Q. You don't remember, though, whether it was before or after you came on the bridge?

A. No, I do not remember that definitely.

Q. When you did come on the bridge, at 7:00 o'clock, you knew that you were just about 5 miles from the break- [938] water light?

A. Yes, after I investigated and looked at the chart to determine it. Whether that was before 7:00 or after 7:00 I am not definite on that.

Q. As a matter of fact you know now, Captain, do you not, that your position at 7:00 o'clock was probably not over 2 miles from the position where the "Olympic" was lying? You know that now, don't you?

A. Yes, by looking at this chart, I can say that it is 2 miles.

The Court: You say at 7:00 o'clock it was only 2 miles?

(Testimony of Syunzi Sato.)

A. At 7:00 o'clock it was just two miles by measurement.

Q. By Mr. Cluff: Captain, when you came on the bridge, did you use binoculars or any aids to vision, to look around and ahead of the ship?

A. Surely I did. I don't understand you, when you say did I use the glasses to determine visibility.

Q. Did you use glasses to look ahead; not visibility, but to look ahead? A. Yes, I did.

Q. What sort of glasses did you use?

A. Two prism; both eyes.

Q. Do you know what the power is?

A. Six power glasses.

Q. Did you see anything ahead?

A. I did not see anything ahead. [939]

Q. Either two or three points to the port or starboard bow? A. No.

Q. Or dead ahead?

A. I did not see anything.

Q. At 7:03 your position must have been not over a mile and a half from the barge, that is, when you slowed down?

A. No, at that time I didn't know, but after it was figured on the chart here, by figuring on this chart, it would appear that it would be about that.

Q. About a mile and a half? A. Yes.

Q. At 7:03, when you ordered the engines slowed, and the whistles blown, you didn't see anything ahead then? A. I didn't see anything.

Q. Captain, is the "Sakito Maru" equipped with

(Testimony of Syunzi Sato.)

a mechanical steering device; what we call in the American merchant marine an iron mike?

A. That is all done by hand.

Q. You always steer by hand?

A. By hand, by the quartermaster.

Q. Do you have a deep sea lead, a sounding device? A. Yes, it has.

Q. What sort of a device is it?

A. A thin wire, and a lead at the end, and it is [940] dropped in the ocean.

Q. You don't know what they call a fathometer? I don't know whether he knows that.

A. I know what a fathometer is, but we haven't got it on the "Sakito Maru".

Q. So the means by which you take soundings is to drop some lead?

A. If it is necessary, we use it.

Q. Captain, at your position at 7:03, you were just approaching the 30 fathom curve? That is right, isn't it?

A. Yes, it would be about that.

Q. About the 30 fathom curve? A. Yes.

Q. Did you take any soundings prior to the collision? A. No, I did not.

Q. If you had taken soundings it would have tended to verify your position with regard to the theoretical position and the actual position, would it not?

A. No, it could not. I want to explain that.

Q. Will you explain, Captain?

(Testimony of Syunzi Sato.)

A. It is absolutely impossible to determine whether it is a mile or three-quarters of a mile by taking two soundings.

Q. Now, Captain, your first officer was on the bridge with you? A. Yes. [941]

Q. Isn't it the custom, Captain, when you are approaching, on going into or out of a harbor, for the first officer and the carpenter, and one or two sailors, to be on the forecastle head?

A. Yes, sir; usually we get a little closer, though.

Q. You did send the first officer and the carpenter to the forecastle head when you got how close to the harbor—how close to Los Angeles, we will say?

A. When we get to about two or three miles we make preparations to lower the anchor.

Q. Then you clear the anchor, and have the carpenter standing by, so that on signal from the bridge, both anchors can be dropped immediately?

A. Within two or three miles, yes, we make those preparations.

Q. Do you make any distinction, Captain, when you send your ground tackle crew to the forecastle head, whether the weather is clear or foggy?

The Interpreter: I did not get the question.

Q. By Mr. Cluff: If there any difference in the distance from port you send your ground tackle crew, the first officer and the carpenter, and sailors, if necessary, to handle the anchor on the forecastle head—is there any difference, whether the weather is clear or foggy?

(Testimony of Syunzi Sato.)

Mr. Adams: I object to the question upon the ground it is incompetent, irrelevant and immaterial. I can't see [942] any materiality, if the court please.

Mr. Cluff: Maybe I have not a very logical mind, but it would seem to me if he had been ready to drop anchor, on his own testimony, he would have avoided this collision.

Mr. Adams: He says when he gets within two miles or so of the breakwater.

Mr. Cluff: That is a question for the court to determine and not for him to determine, whether he was negligent or not in so doing. I am trying to find out what his practice was.

The Court: Was he under any obligation to do so?

Mr. Cluff: That is a question for the court to determine, whether it is good seamanship under the circumstances. He has testified that if he dropped both anchors he could stop the ship immediately. He testified that in approaching the harbor he did not have his officer on the forecastle head. It was foggy. I am trying to find out if he makes any distinction in carrying out conventional precautions, whether the weather is clear or foggy.

Mr. Adams: There is no evidence that that is a conventional precaution.

Mr. Cluff: Do you dispute the fact?

Mr. Adams: I am going to put you to strict proof on it.

(Testimony of Syunzi Sato.)

The Court: I will overrule the objection. It is a whole lot like I stated before, that if a fellow drove a little faster, he would not meet the other one at the [943] intersection.

Mr. Cluff: That is true, your Honor; if you haven't got a look out, and a number of other things the courts have been pretty strict about saying it is a fault, if they don't do it.

The Court: The court will be educated, I presume, before he gets through with you lawyers. [944]

Mr. Adams: It is outside of the pleadings. There is nothing about its being a fault.

Mr. Cluff: We have adopted the same practice you have, Mr. Adams, of putting in a shotgun charge——

The Court: I have ruled.

The Witness: It depends on the time and condition.

Q. By Mr. Cluff: That is, if it is foggy——

A. At that time,——

Q. If it is foggy, you send the crew to the forecastle head earlier than if it is clear?

A. At that time I did not believe, at 7:03, that it was necessary to do that.

Q. Why was it, Captain, that you did not think it was necessary?

A. There was no reason or necessity to send them there.

Q. Captain, how often have you been in and out

(Testimony of Syunzi Sato.)

of the Harbor of Los Angeles in charge of a ship, or as an officer on a ship?

A. Not even though I was a captain; even an officer?

Q. Either as captain, officer, or in any other capacity.

A. I am not definite, but about 10 times.

Q. And during what period of time?

A. About five or six years ago.

Q. Can you give us the year definitely?

A. About 1933.

Q. Have you been coming in and out of Los Angeles more [945] or less continuously since 1933?

A. During the years 1933 and 1934.

Q. What ship were you on at that time, Captain? A. "Sama Maru".

Q. That was one of the big passenger vessels of the NYK Line? A. Yes.

Q. What was your capacity?

A. Chief officer.

Q. Chief officer of the "Sama Maru"?

A. Yes.

Q. And the "Sama Maru" was on what line at that time?

A. Yokohama, Honolulu, San Francisco, Los Angeles, and on the homeward voyage the same way.

Q. Did she go south of Los Angeles?

A. Not with that boat.

Q. In '33 and '34 you were in and out of the Port of Los Angeles, about how many times?

(Testimony of Syunzi Sato.)

A. About five or six times.

Q. After you left the "Sama Maru", were you on the North American Pacific Coast run?

A. Yes.

Q. On what vessels were you then?

A. The "Atago Maru".

Q. And in what capacity?

A. Captain. [946]

Q. Where did the "Atago Maru" run?

A. From Japan to Honolulu and Los Angeles, and then South America.

Q. And down to South America, on the run to South America from Los Angeles, you made Valparaiso, and the West Coast ports? A. Yes.

Q. The West Coast of South America?

A. Yes.

Q. In making your passage south from Los Angeles for South America, you run on approximately the same course you run to go to the Canal, don't you? A. You mean the course to go south?

Q. The course to go south; leaving Los Angeles Harbor, it's just the same as going to the Canal, on about 160 true?

A. That is about the course that we take; possibly we might change two or three times.

Q. About 160 true; some place between 150 and 170? A. Generally in that neighborhood.

Q. The "Atago Maru", how long were you on the "Atago Maru"—during what years?

A. I am not positive about the year, but I think it was between '36 and '37.

(Testimony of Syunzi Sato.)

Q. During that time how many trips south, in and out, did you make from Los Angeles to South America and back? A. Three times. [947]

Q. And that was in '36 and '37? A. Yes.

Q. After leaving that vessel in '37, what was your next command?

A. I went to another ship.

Q. What was the name of that ship?

A. There have been a number of changes.

Q. In what service were you running then, let us put it that way?

A. I went throughout Japan.

Q. At any time in '37 or '38 did you make any voyages to Los Angeles?

A. No, I didn't. That's in '38?

Q. '38. In '39 did you make any voyages to Los Angeles? A. No, I did not come then.

Q. Did you take command of the "Sakito Maru" when she was first put in commission? A. No.

Q. You were not her first captain? A. No.

Q. When did you first become captain of the "Sakito Maru"? A. June, 1940.

Q. So that was just on the round voyage on which this accident occurred?

A. It was that voyage. [948]

Q. That is, you took command somewhere in Japan, and you brought her out, and went to New York?

A. I went on board in June, in Japan; then I went to Manila; then Kobe and Yokohama—

(Testimony of Syunzi Sato.)

Q. That is all right; you need not enumerate the ports. Captain, on that voyage you called at Los Angeles for bunkers, bound for New York, on July 16, 1940?

A. At that time it was not only bunkers; I think we discharged some cargo.

Q. But on July 16 you were in the Port of Los Angeles? A. Yes.

Q. According to the pilot records—correct me if I am wrong, Mr. Adams—the ship arrived at the NYK berth in San Pedro, Berth 153, on July 16, at 10:40 a. m.

Mr. Adams: You want me to correct you if you are wrong. Our records of arrival at the port are different from that. It was 7 a. m. at the breakwater.

Mr. Cluff: I have her docking time here. I will accept that.

Q. You arrived at the breakwater at 7 a. m. then, and cleared the breakwater, outbound, that is, south-east, at 7:57 p. m.?

(To Mr. Adams) Will you check me on that?

Mr. Adams: I have the lookout record, which is 7 o'clock.

Mr. Cluff: Mr. Adams, I will accept your correction.

Q. You were in command of the ship on that outward [949] passage from Los Angeles, on July 16? A. Yes.

Mr. Adams: If the court please, I would like

(Testimony of Syunzi Sato.)

to have the witness informed whether Mr. Cluff meant, when he said he was in command of the ship —whether he was master of the ship, or whether he was in command as a navigator on the bridge at the time.

The Court: I presume he will develop that. Proceed.

Q. By Mr. Cluff: Captain, I suppose it is your custom always to be on the bridge when your ship is entering a port practically from the time you get on soundings, and when she is leaving the port until she is well clear of the land?

A. What do you mean by soundings?

Q. Well, until you are well clear of the land. Let us change that. He apparently does not understand it. Let us explain to the Captain that when I say "soundings" I mean when he is close enough to the shore so it is practical to take soundings by mechanical devices on board.

A. What do you mean?

Mr. Cluff: Let me explain off the record.

(Mr. Cluff and interpreter conferring together.)

The Interpreter: I understand that.

A. I understand what soundings mean.

Mr. Cluff: Let me amend the question here and we will get at it quicker. [950]

Q. Is it your custom, Captain, to stay on your bridge, supervising the navigation, both coming

(Testimony of Syunzi Sato.)

into and leaving a port until you are well out at sea? A. What is that?

Q. Until you are well clear of the land?

A. That depends upon the condition at that time.

Q. When you took the "Sakito Maru" south from Los Angeles on July 16th at 7:50, isn't it true—

The Court: At 7:50? 7:05.

Mr. Cluff: 7 o'clock, yes.

Q. Passing the breakwater at 7 o'clock, that the weather was clear, the sea smooth?

A. I haven't got that recollection at this time. I think it was clear.

Q. You think it was clear. Now, your course as you went south was about 160 true, or some place between 155 and 165?

A. I think it was in that neighborhood.

Q. On July 16th it would be broad daylight until around half past 7, would it not?

A. P. M.?

Q. Yes; P. M., half past 7 P. M.

A. I don't remember that.

Q. Captain, on the course that you went out you must have passed within a half a mile, or probably closer, of the position where you ran into the "Olympic" about two [951] months later, isn't that true?

A. I don't remember that.

Q. Well, figure it out here. Was the course—

A. How do you mean figure it out?

(Testimony of Syunzi Sato.)

Q. Was your course going out on July 16th about 160 true from the breakwater?

A. I will explain that.

Q. Go ahead.

A. When the ship left the Harbor we do not always set the course, because possibly near the Harbor there must be something, so we have to maneuver through there.

Q. After maneuvering a little right around the entrance, when you get off a mile or two you take a departure, that is, you take a bearing some place and get a departing fix, don't you?

A. Yes; we do. We take a—it depends where we are. We take it.

Q. So I suppose on that trip south—this is a fair assumption, isn't it—that you took your departure some place within a mile or two of the breakwater light and headed south about 160 true or thereabouts?

A. I think generally that it was taken.

Q. So you must have passed—

The Court: Just a moment. I would like to have him explain his answer, what he means. He says that when they are leaving the Harbor they generally don't take their [952] bearings because a certain amount of maneuvering has to be done after leaving the Harbor.

Mr. Cluff: Possibly, I think, I know what he means.

The Court: I know what he means. But did he

(Testimony of Syunzi Sato.)

do that on that occasion? That is what I am asking.

Mr. Cluff: All right.

Q. Captain, do you remember any extraordinary maneuver at the time you left the Harbor on the "Sakito Maru" on July 16th?

A. Yes; I did.

Q. What extraordinary maneuver did you make?

A. Because that was close to the Harbor. What do you mean, up to how many miles?

Q. No. As you left the Harbor on July 16th, as you passed out of the breakwater, you don't remember anything unusual that you had to go a mile or so off to the right or a mile or so off to the left, do you?

A. I have no such recollection.

Q. And about all you would maneuver in going out of the Harbor would be to turn a little to the right or a little to the left to avoid another ship; that is right, isn't it?

A. Surely, if there was something there we would have to do it.

Q. So after you got out of the Harbor you would get out a mile or so until you could get two good points for a fix? [953]

A. We take it maybe out one mile, two miles or five miles, whatever it may be.

Q. But anyhow, you get out there and take a fix and then you head right straight on your course?

A. Yes.

Q. Now, Captain, do you remember going out on

(Testimony of Syunzi Sato.)

that time some time about between 7 o'clock and 7:15 or thereabouts, at about the position where you ran into the "Olympic", of seeing three barges at anchor?

(Question read by the reporter.)

A. I haven't got that recollection.

Q. Would you say that you did not see them?

A. I have no recollection whether I did see it or did not see it.

Q. Captain, had your chief officer been on the "Sakito Maru" on her first voyage, Mr. Yokota?

A. I don't think he was on the first voyage.

Q. Did you have any officers on the "Sakito Maru" on the voyage when you were her captain that had been on the ship on previous voyages?

A. The chief officer was on before me.

Q. Did you consult with the chief officer about any vessels or fishing grounds or any other things that might affect navigation around in the vicinity where the "Olympic" was lying?

Mr. Adams: Objected to as incompetent, irrelevant and [954] immaterial. A. What time?

Q. By Mr. Cluff: At any time after you took the command of the ship up to the collision?

Mr. Adams: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

A. No; I did not. I want to explain.

Q. By the Court: Well, Captain, why did you want to be called at 7 o'clock?

(Testimony of Syunzi Sato.)

A. You mean the day of the collision?

Q. Yes.

A. Because I want to be protected when we get in about five or six miles from the breakwater.

Q. Why?

A. So when we get close to the breakwater, why, I want to be there.

Q. Why did you want to be there?

A. That is the Captain's duty.

Q. Isn't it a fact that as you approach a harbor or breakwater, such as you approached that morning, that the Captain anticipates meeting vessels?

The Interpreter: Repeat that, please.

(Question read by the reporter.)

A. No; that is not so. Of course, when we get close to a harbor that is the reason I always want to be on the [955] bridge.

Q. For what reason?

A. Getting close to the harbor.

Q. Then he does not anticipate meeting any other vessels in the vicinity of the harbor?

A. Possibly they would be and possibly they would not be.

Q. Ask him if it is not a fact that the reason that he wanted to be called at 7 o'clock was that he could have direct command of the maneuvering of his vessel as it approached the harbor.

A. That is right. The reason is also that when the Captain goes to the bridge that he takes over all the maneuvering of the ship.

(Testimony of Syunzi Sato.)

Q. And they expect there is a possibility of unusual maneuvering as they approach the harbor, do they not? A. That is right.

Q. So he figured on taking charge of the boat about five miles out?

A. I thought that it was enough if I got to the bridge when we got within five or six miles.

Mr. Cluff: Has the court any further questions?

Mr. Adams: The witness was about to make an explanation when the court asked a question and I suggest he be permitted to make the explanation he was going to give.

A. No; I have nothing particular. [956]

Mr. Adams: Something about why he did not consult with the chief officer. He asked him how he explained it and then the court asked a question.

Mr. Cluff: Yes; I remember that.

Mr. Adams: Will the reporter go back in the record to just before the court's question? May I have the question and answer read, just before the court asked a question?

The Interpreter: Yes; I got that. I think the question was whether there were any fishing spots around where the collision happened. Isn't that what you asked?

Mr. Cluff: No; I didn't ask him that. Yes; I asked him if he consulted his chief officer as to whether—

A. You mean with reference to fishing spots?

Q. Fishing spots or any other thing that might affect navigation.

(Testimony of Syunzi Sato.)

A. I never did consult with him. I never thought that in a harbor as busy as Los Angeles, where ships were going in back and forth, that there would be any fishing barge close to the harbor.

Q. Captain, you have passed out of Los Angeles Harbor on that southbound course of around between 150 and 170 true at least five or six times during the past six years; that is true, isn't it? [957]

A. No. No. When I came in Los Angeles Harbor we came in the opposite direction.

Q. When you were on the South American run, anyhow? A. Three times.

The Court: That is covering the same ground.

Q. By Mr. Cluff: Three times in and three times out. Six times altogether you went over these waters? A. It would be six times.

Q. Didn't you observe, Captain, during this time that this area right around in here where this accident happened was a fishing bank which, day and night, vessels of all sorts were laying at their anchors and handling their nets?

Mr. Adams: If the court please, this Captain was not there day and night on those fishing grounds and Mr. Cluff is expecting him to retain that all in his memory after all this time.

The Interpreter: Repeat the question.

(Question read by the reporter.)

A. I haven't got that recollection.

Q. By Mr. Cluff: At any time when you went in

(Testimony of Syunzi Sato.)

or out of Los Angeles Harbor prior to the collision—

The Court: He has answered. He has told you he hasn't any recollection. He has told you a half a dozen times.

Mr. Cluff: I am not asking him if he has any recollection. I am asking him if he has seen any fishing boats there on any of these occasions. That is what I propose [958] to ask him.

Mr. Adams: He has answered that. He said he didn't have any recollection.

Mr. Cluff: He said he didn't have any recollection about any fishing banks and now I am asking him if he has any recollection of having seen any fishing boats there on any of these occasions.

The Court: You might ask him if he saw a canoe out there.

Mr. Cluff: All right; I will ask him that question. It seems to me this is a legitimate line of examination. I don't want to presume on the court's—

The Court: It is very apparent the witness is not going to admit that he ever knew anything was out there.

Mr. Cluff: If the court has that impression, all right.

The Court: I don't say that he is. Please don't misunderstand. I don't say that he is, but it is very apparent.

Mr. Cluff: Forgive me if I get impatient. This is the end of a long day, and I am sorry.

The Court: The court may get impatient, too.

(Testimony of Syunzi Sato.)

Q. By Mr. Cluff: Captain, the Nippon Yusen Kaisha has a large organization in Los Angeles at berth 153, both in Los Angeles and berth 153, that is true? A. You mean Japanese?

Q. Well, Japanese or other races. I mean employees [959] of the N. Y. K., handling their organization here?

A. I think they have; yes.

Q. They have at the harbor what we would call a marine superintendent, that is, a port captain or somebody who has a general charge of the vessels when they call here?

A. You mean the company, N. Y. K.?

Q. The company, yes.

A. I don't think they have any. I don't remember.

Q. They have someone at the dock, don't they, that takes care of the supplies and services the vessel?

Mr. Adams: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Cluff: My purpose—all right.

A. Yes; they have.

Q. Who is that gentleman?

A. I don't know his name. I don't remember it.

Q. When you came in with the "Sakito Maru" on July 16th, I suppose you consulted with this gentleman, the marine superintendent, or whatever his title is? A. You mean July 16th?

Q. Yes.

(Testimony of Syunzi Sato.)

A. I never have consulted him on navigation.

Q. You did not ask him if there were any conditions around the harbor that you should take a lookout for, going in and out? [960]

Mr. Adams: If the court please, I object to that as incompetent, irrelevant and immaterial.

The Court: Object on the grounds it has been asked and answered, because he said he didn't consult with him.

Mr. Cluff: He said he didn't consult with him. Well, I will accept the answer.

Q. Captain, you read some English, do you not?

A. Yes; a little.

Q. I notice your logs are kept in English. That is a general custom, not only on the N. Y. K. Line, but on most Japanese offshore vessels?

The Court: Well, whatever they used on his vessels.

Q. By Mr. Cluff: Who writes up the logs?

A. The officers of the watch, different times.

Q. You read English sufficiently to read and understand the logs? A. Yes; I can.

Q. Are you familiar with the "Coast Pilot," a publication of the Department of Navigation?

A. A what?

Q. The Coast Pilot, an official publication of the Department of the Bureau of Navigation?

A. I have seen it and I haven't seen it.

Q. Do you have a copy of the—wait a minute. This is a copy of the book to which I have reference, Captain. A. I have seen this. [961]

(Testimony of Syunzi Sato.)

Q. Do you have a copy on board the "Sakito Maru", or did you have at the time of the collision voyage?

A. Not at that time I didn't see it.

Q. Did you have on board any book or publication containing local information as to recommended courses approaching Los Angeles Harbor?

A. I didn't see that book which he just showed me but we have other books.

Q. Well, do you have any book put out by any authority of the United States, either in English or any translation in Japanese?

A. At times we have both.

Q. All right. Can you give us the name of any publication, any such publication that you have?

A. No; I just cannot. I have forgotten it.

Q. Where did you determine upon the course 340 true as the approach to Los Angeles Harbor?

Mr. Adams: Just a minute. May I have the question read again, please?

(Question read by the reporter.)

Mr. Adams: I don't understand the question. I object to it as incompetent, irrelevant and immaterial and unintelligible. Where he did this, does he mean on this voyage or does he mean in terms of years of experience or when?

Mr. Cluff: I mean on this voyage. When did he set the [962] course of 340 true?

Mr. Adams: I have no objection, with that explanation.

(Testimony of Syunzi Sato.)

A. You mean that day or on that voyage?

Mr. Cluff: Let us see if we can help.

Q. The course 340 true was set some place off the Bonita Islands, wasn't it? You got a beam bearing on the Bonita Islands down off the coast of Lower California? A. Yes.

Q. About 9:00 o'clock the previous day?

A. Yes.

Q. And then you got a tentative fix as you passed Coronado?

A. That was 1:50 when we passed Coronado.

Q. Yes. And that projected course of 340 true from those points, if made good, would carry you right to the breakwater. Now, that is the way you laid it down, isn't it? A. That is about.

Q. That is about it, yes. Now, if the weather had been clear and remained clear you would have proceeded right up until you could have gotten sight of the breakwater, and then you would have maneuvered your ship in; that is right, isn't it?

A. No; wrong. Can I explain to you?

Q. Please do.

A. The usual voyage, or the navigation, you run several hours and you surely will go from one side to the other. [963]

Q. Surely.

A. Either side. It is impossible to go right straight on that line. Possibly we could stay on that line. Therefore before we enter into the port we take —when we see the entrance to the breakwater clearly,

(Testimony of Syunzi Sato.)

then we start maneuvering the boat into the harbor.

Q. That is it. That is, you try to hold the theoretical course as well as you can with the means at hand?

The Court: That has been asked and answered. Gentlemen, I think we will take our recess now before we all blow up. I think everybody is tired. It has been a hard week. We will take a recess now until 10:00 o'clock Tuesday morning, gentlemen.

(Whereupon an adjournment was taken until Tuesday, September 23, 1941, at the hour of 10:00 o'clock a. m.) [964]

Los Angeles, California
Tuesday, September 23, 1941
10 A. M.

(Parties present as before with the addition of Perry G. Briney, Esq., for Intervening Libelant George W. Berger.)

Mr. Fall: We ask leave to dismiss the case of the International Broadcasting Company. We will file a written stipulation and order this afternoon.

The Court: You file a written stipulation and order to that effect.

Mr. Adams: May a minute order also be entered exonerating the bond posted in that case?

The Court: It will be all in the same order. That is the company that you represent, is it?

Mr. Fall: I represent the International Broadcasting Company.

The Court: You represent the International Broadcasting Company?

Mr. Fall: Yes, sir.

The Court: And you request a dismissal of that libel?

Mr. Fall: Yes, sir.

The Court: Your request will be granted. It will be ordered dismissed and the bond posted will be exonerated.

Mr. Fall: We have no objection at this time.

The Court: I think, gentlemen, you had better draw a [965] written order to cover it.

Mr. Adams: May I request that you incorporate in the order a provision that the bond be exonerated?

Mr. Briney: If the court please, as attorney for Berger, I would like to move the association of Mr. Fall with myself, as attorney for Berger. His claim against the radio equipment is to stand in place of the other one.

The Court: You may take the order.

You may proceed, gentlemen.

Mr. Cluff: Captain Sato was on the stand. [966]

SYUNZI SATO

recalled.

Cross-Examination (Resumed)

Mr. Cluff: Mr. Bargion, do you have the last couple of questions?

The Court: You were asking him last about the drifting, the boat having drifted.

(Testimony of Syunzi Sato.)

Mr. Cluff: Oh, yes.

Q. Captain Sato, I think you said at the close of the hearing that your course from the fix at 6:58 (5:58) might have taken you a little to the west and east of the theoretical line which you established from that fix, but—

The Court: Wasn't it 5:58?

Mr. Cluff: What is that?

The Court: Wasn't it 5:58?

Mr. Cluff: Yes; it was 5:58.

The Court: He has already so testified. The chart shows that and he has testified.

Mr. Cluff: Very well.

The Court: I think he testified about a mile and a half.

Mr. Adams: If the court please, I believe it was only about three-quarters of a mile.

The Court: Whatever the distance is.

Mr. Adams: Yes.

Mr. Cluff: Three-quarters of a mile we measured, I think. [967]

The Court: The map shows it, because it shows the two nearly parallel lines. One line is not quite parallel, as was pointed out by the witness.

Q. By Mr. Cluff: Captain, I want to direct your attention to the moment you first sighted the "Olympic" at 7:09. On the paper that I show you let us assume that the line here is a course of 340 true and here is the "Sakito Maru" on it. Will you fix this other model in the exact position where you first saw the "Olympic"? A. At what time?

(Testimony of Syunzi Sato.)

Q. At 7:09 when you first saw it.

The Court: Did he see it at 7:09 or did both witnesses see it at the same time?

Mr. Adams: Yes, if the court please, almost immediately afterwards. Well, immediately after the lookout—

The Court: As I recall it, this witness said that his attention was called to it by the lookout.

Mr. Adams: And he immediately looked up and saw it.

The Court: Yes.

Mr. Cluff: The stop bell is logged at 7:09, and that was on his order.

Mr. Adams: I wish to object to the question upon the ground that the witness said that when he first saw the barge at 7:09 it was dim in the fog and he was unable to determine exactly how she headed.

The Court: Well, if he cannot answer the question, why, [968] that is up to him. The objection is overruled.

A. You mean the heading?

Q. By Mr. Cluff: I mean the position, first, with reference to the bow of the "Sakito Maru."

A. At that time the fog was there and I could not—I cannot give you anything positive as to the exact position of the "Olympic".

Q. All right. Then, Captain, did the mass or shape you saw bear on your starboard bow, on your port bow or right dead ahead?

A. Approximately dead ahead.

(Testimony of Syunzi Sato.)

Q. Well, you say "approximately". Was it any on the starboard bow or any on the port bow that you can say now?

A. That I do not remember definitely.

Q. At that moment you said the visibility, I think, was about 200 meters.

A. Yes.

Q. And the barge was just about 200 meters ahead, according to your best estimate?

Mr. Adams: I object to the question upon the ground it is not what the witness testified to. He said he had thought before he saw the barge that the visibility was 300 meters, but when he saw the barge he thought the barge was 200 meters ahead.

Mr. Cluff: Yes; I think you are right, I think you are right. [969]

Q. When you saw the barge you thought she was 200 meters ahead, and that is your best judgment? A. Yes.

Q. And it was then, before you ascertained her heading or whether or not she was an anchored vessel, you rang the telegraphs to stop and full astern and put the wheel hard a starboard?

A. Yes; I gave that signal.

Q. And that was before you knew the heading?

A. What heading?

Q. The heading of the barge.

A. I knew that the heading was on the port of the "Sakito".

Q. You knew at the time you gave the hard

(Testimony of Syunzi Sato.)

astarboard helm that the "Olympic" was headed toward the "Sakito's" port side?

A. Hard astarboard?

Mr. Cluff: Will you read the question, Mr. Bargion?

(Question read by the reporter.)

A. Not positive, but I did know that it was.

Q. Very well. At the time you gave the hard astarboard helm will you place this model on the diagram here in the position that you ascertained the "Olympic" to be heading?

A. You asked me to give you the position at that time. It was in a fog so I couldn't tell you exactly what position or what shape the barge was; but I did know that it was to [970] the port of the "Sakito".

Q. That is, that she was headed to the port, or the shape of the barge was to the port?

A. The "Olympic" heading at that time was the "Sakito's" port.

Q. Now, Captain, how long after the hard astarboard helm could you definitely tell how the "Olympic" was heading? A. Right after that.

Q. Right after that?

A. Possibly 20 seconds or 30 seconds.

Q. Possibly 20 seconds or 30 seconds. Now, when you did definitely ascertain just how she was heading, will you fix the model in the position of her heading as it seemed to be to you from the bridge about 20 or 30 seconds after 7:09?

(Testimony of Syunzi Sato.)

A. I knew that definitely, but at this time I have no definite recollection.

Q. You cannot say now whether the "Olympic" was absolutely broadside to the course of the "Sakito", or whether she was headed to the west, or whether she was headed to the southeast—

Mr. Adams: You mean at that particular moment?

Q. By Mr. Cluff: —or to the southwest?

Mr. Adams: In the chronological order of events, Mr. Cluff?

Mr. Cluff: Well, the witness, I think, understands my question, Mr. Adams. [971]

Mr. Adams: Just a minute, just a minute. If the court please, as the "Sakito" got closer to the "Olympic" yes, then he could probably see her.

The Court: He said in 20 or 30 seconds he was then able to see definitely the outlines of the "Olympic".

Mr. Adams: I don't know whether he understands the question is directed exactly to that time or not.

The Court: I think this witness is a pretty intelligent witness.

Mr. Adams: I think he is, too, but the court will appreciate that the problems of the interpretation and translation are very difficult.

The Court: I know, but this witness has been able to take care of himself pretty well. He has answered the questions very intelligently.

(Testimony of Syunzi Sato.)

Mr. Adams: I have no point in my mind other than to make sure the question is understood by the witness.

The Court: If there is any misunderstanding you can bring it out on redirect.

The Interpreter: Will you read that question?*

(Question read by the reporter.)

Mr. Cluff: May I amend that question: As to whether she was headed to the northwest or the southwest? "Southeast" is ridiculous.

A. At that time I did not have a correct judgment. [972]

Q. And that was 20 or 30 seconds after the hard starboard helm? A. Yes.

Q. Now, just a moment, a moment or two before the collision, then, it was clear how she was headed, was it not, Captain?

A. You mean immediately before the impact?

Q. Immediately before, within half a minute before the impact? A. Nearly broadside.

Q. Nearly broadside. Can you tell now whether it was a little bit the stern toward the "Sakito" or the bow toward the "Sakito"?

A. No; it was practically broadside.

Q. So, according to your best estimate now, she was headed approximately 270 true?

The Court: You mean the "Olympic"?

Q. By Mr. Cluff: The barge. Just about right angles to the course of the "Sakito Maru".

A. About that; yes.

(Testimony of Syunzi Sato.)

Q. And that would be about southwest by west magnetic, wouldn't it, Captain?

A. It is very hard for me to give you any exact statement on that.

Q. But anyhow, when you were very close, within 30 seconds of the impact, she was absolutely broadside, as [973] near as you can tell now, just as you have indicated with this model?

A. Yes; about that.

Q. Will you place the model again, Captain?

A. This is only approximate now.

Q. This is only approximate.

A. At what time now are you speaking of?

Q. Any time you like up to the moment of impact, Captain, just where you are absolutely as sure as you can be.

A. Immediately before the impact it was about like that (placing model on paper).

Mr. Cluff: Let the record show the witness has placed a model. Now, Mr. Bischof, will you put your finger firmly on the same? Good. All right; both of you hold it now and I will get a line over here. All right. Now I can handle it all right. (Drawing pencil around model placed by the witness.) I will mark that "Olympic".

The Court: May I ask, isn't it the intention of the witness to demonstrate that was the relative positions of the two boats so far as distance apart was concerned?

(Testimony of Syunzi Sato.)

Mr. Cluff: I don't think so. Certainly the question was not directed to that.

The Court: That would be unfair—

Mr. Cluff: Oh, absolutely.

The Court: —to indicate that the distance between the two boats was as great as shown on the drawing. [974]

Mr. Cluff: Oh, certainly. Furthermore, I am using models of the same size, whereas the "Sakito" is twice as large as the "Olympic". There is no intention to have any idea of distance here at all.

A. The position of the "Olympic" is just a little before the impact.

Mr. Cluff: Yes.

A. Immediately before.

Q. Now, as you said, you were observing these things from the bridge?

A. Yes; I was on the bridge.

Q. And do you remember whether you were on the port or starboard wing during these times after you sighted the barge?

A. I was on the starboard wing when I saw it.

Q. You were on the starboard wing. And did you stay there up to the time of the collision?

A. No; I was not standing there.

Q. Now, did you move from one side of the bridge to the other?

A. Yes. I went to port and I went to center, back and forth.

(Testimony of Syunzi Sato.)

Q. That is, to center, that would mean going inside the wheelhouse where the quartermaster was?

A. Yes.

Q. Where were you precisely at the moment of impact? [975] Were you in the wheelhouse or on one wing or the other?

A. I think I was in the center, inside.

Q. Of course, all your estimates, Captain, are based upon your viewpoint up there on the bridge?

A. Yes.

Q. So when you say the barge was 200 meters away, you mean 200 meters from where you were?

A. That is from the stem.

Q. That is from the stem. Then, from where you were your stem is about 65 meters ahead of the bridge, isn't it?

The Court: Use feet around here so the court can follow you quickly. A. Yes.

Mr. Cluff: I wonder if you would read that question and answer, please?

(Question and answer read by the reporter.)

The Court: How many feet would that be?

Mr. Cluff: About 165 feet.

Mr. Adams: I was seeing if I didn't have it here, if the court please. 213.20 feet.

Mr. Cluff: What is that?

Mr. Adams: 213.20 feet is equivalent to 65 meters.

Mr. Cluff: I wonder if, in fairness to the witness, the evidence was not "45" instead of "65".

(Testimony of Syunzi Sato.)

Q. Captain, is the distance from the bridge to the forecastle head 65 or 45 meters? [976]

A. 65 meters.

Q. 65 meters. Captain, you spoke at the last session that just before the collision you saw another ship beyond the "Olympic" and on the "Sakito's" port bow?

A. You mean that was just a little before the impact?

Q. Just before the impact you saw another boat—not the "Olympic"—but another boat?

A. Yes; a small boat.

Q. Will you describe that boat?

A. At this time I have no recollection of that.

Q. No idea how long it was, whether it was 30 feet long or 150 feet long?

A. I have no recollection.

Q. You don't know whether it was a power boat or another barge?

The Court: What boat would that be?

Mr. Cluff: What is that?

The Court: What boat would that be?

Mr. Cluff: I am trying to find out whether it is the "Point Loma" or a water taxi or something else, Judge. I don't know what the witness has in mind.

A. It didn't appear to me to be as big as a barge.

Q. Smaller than the "Olympic"?

A. It was a small boat.

Q. Smaller than the "Olympic"?

(Testimony of Syunzi Sato.)

A. Very much smaller. [977]

Q. Very much smaller. Was it a moving boat or a boat standing still?

A. It was moving boat.

Q. A moving boat. Did it have a smokestack, funnel?

A. I don't think it did, but I haven't got a definite recollection.

Q. You were familiar, Captain, with the kind of boat we call a water taxi in Los Angeles?

A. I don't think I have ever seen one, a water taxi.

Q. The kind of boats that, when you tie up in the roadstead, you go out from the big boat and go back again?

A. I think we call that tugboat. Is that what you mean, tugboat?

Q. No; not a tugboat, a gasoline boat.

A. I know what you mean.

Q. Was it one of those?

A. Possibly it was a boat similar to that or maybe a little smaller.

Q. Do you think it could have been a tugboat, Captain?

A. No; it was not a tugboat.

Q. Now, Captain, will you take the pencil and make a little spot on the chart on the relative position as to the "Olympic" and the "Sakito Maru" where you saw that small boat just before the impact?

(Testimony of Syunzi Sato.)

A. You mean drawing of the boat itself?

Q. Well, just a mark, just a mark to show where it was. [978]

A. The first time I saw it, it was right in that neighborhood.

Mr. Cluff: The witness is indicating a circle which I will mark with a "B".

Q. How close did that boat—

The Court: How could he see a boat in that position?

Mr. Cluff: That is something that he may know, I don't.

Mr. Adams: Well, if the court please, he is 55 feet up in the air. He is looking down over the deck of the "Olympic".

The Court: I was asking that question to elicit that explanation.

Mr. Adams: Yes.

The Court: Because if it was a small boat right directly in the ray of his vision, it would seem to me, if it was that small as he described, it would not be visible.

Mr. Adams: He has indicated a rather wide area. I mean, I don't think he has testified she was alongside. He said it was in that area.

The Court: All right; you see the chart there.

Q. By Mr. Cluff: Captain, how far was that little boat from the bow of the "Olympic"?

A. It is impossible for me to tell you. That I don't know.

(Testimony of Syunzi Sato.)

Q. Could you see any water between it and the side of the "Olympic"? [979]

A. Yes; I could.

Q. You could see water. Was there as much as, oh, 30 meters of water?

A. No; I couldn't tell you whether it was around 30 or not, anything like that.

Q. Would you say that it was more than 30?

The Court: I think the witness has answered the question. He said he does not know.

Mr. Cluff: Very well.

Q. How was that little boat headed, Captain?

A. I haven't got that recollection, either.

Q. When did you first ascertain, Captain, with reference to the time that you stopped the engines and put the helm hard a starboard—when did you first be sure in your mind that the "Olympic" was an anchored vessel?

A. About 20 or 30 seconds after the first time that I saw the "Olympic" I determined that.

Q. How did you determine it, Captain?

A. I knew that it was not moving. I knew that it was an anchored ship.

Q. Well, you knew that it was not moving. Did you see the anchor chain down?

A. Yes; continuously after that I did see it.

Q. You saw the anchor chain? A. Yes.

Q. And you also heard the continuous ringing of the [980] bell, Captain?

A. No. That was when I got a little closer.

(Testimony of Syunzi Sato.)

Q. Oh, you were a little closer before you heard the bell?

A. Yes; after I moved forward a little bit.

Q. About how far were you, do you think, from the point of impact when you first heard the bell?

A. That I can't tell you.

Q. Captain, you have established, of course, before this collision the pivoting point, that is, the point in the "Sakito's" structure where she turns when her helm is put over one way or the other?

A. You mean the position of the "Sakito" or the point of the "Sakito Maru"?

Q. No; I mean the point in the "Sakito's" structure where, when you put the helm hard over, she swings so, or so, or so, or so (illustrating).

A. You mean the turning point of the ship?

Q. The turning point of the ship; yes.

A. It is a little forward from the center.

Q. A little forward of amidships? A. Yes.

Q. Just about like all ships?

A. Yes; if it is the usual structure of the ship it would.

Q. So it would be just about under the bridge, wouldn't [981] it, Captain?

A. It might be about below the bridge.

Q. Well, as a matter of fact, Captain, it was established by the naval architects on her trials, wasn't it, by meters and centimeters?

A. Yes; that was established by the shipyards.

Q. And do you know how many feet aft of the bow? A. You mean the "Sakito Maru"?

(Testimony of Syunzi Sato.)

Q. The "Sakito Maru".

A. I don't remember that.

Q. Now, Captain, on that turning point, wherever it is, when you put the wheel hard a starboard or hard a port your ship swings on that point? Just get that much of it, will you?

(Question read by the reporter.)

A. That point as the center.

Q. Right as the center?

A. As the center.

Q. So when you put the helm hard a starboard, the stern swings with the pivoting point as the center to port and the bow to starboard? A. Yes.

Q. And that happens right away just as soon as you put the wheel over?

A. What do you mean, immediately?

Q. Within two or three seconds she begins to swing? [982]

A. You mean after the wheel is put, the helm is put to starboard or to port, or when do you mean?

Q. Right after the helm is put to starboard.

A. Surely, after the helm is put.

Q. And then, from the momentum or inertia, as you call it, it sort of goes so (illustrating), a little sideways along the original course before it begins to draw off—right?

A. When you take—as she turns, she turns in that manner after the helm is put to starboard or port.

Q. Indicating a surging along the course with

(Testimony of Syunzi Sato.)

the model. Will you do that again for the Judge? Just a moment.

Will you ask the witness, Mr. Bischof, to make the movements very slowly, just showing step by step how the ship reacts to her hard helm?

A. The helm is put to starboard or port. After that immediately it moves in that manner.

Q. Indicating a gradual curve to the right.

A. In the beginning it starts to turn very slowly after the helm is put over. [983]

Q. Yes. Now, Captain, from your handling of the ship can you tell us about how far at 6 knots an hour, or $6\frac{1}{2}$ knots an hour she will range along her course before her bow will pull off, say, 100 or 200 feet?

A. Do you mean if it's 100 or 200 feet off the course, the original course, or what do you mean by that?

Q. I mean, suppose there is an object ahead of the ship that extends 100 feet to the right of her bows, the center line of her bows, now, you put the helm hard to starboard, how far will the ship go along the original course before the bow clears that object 100 feet to the right?

A. Supposing the ship is moving along this way, do you mean how far will it go between this distance before it will go to the right?

Q. That's right, along the course, how long would it go before it would pass that object 100 feet to the right?

(Testimony of Syunzi Sato.)

A. About 300 meters, I think; over 300 meters.

Q. That would be over two lengths of the ship?

A. Yes; over two.

The Court: Then do I understand the witness' testimony to be to the effect that they would have to have seen the "Olympic" at least 300 meters away before they would have an opportunity to avoid the collision?

Mr. Cluff: Before they could avoid her. As a matter of fact to go probably 200 feet to the port of the "Olympic", if she were heading broadside, would have been a little [984] longer. I think that is the effect of this testimony.

Mr. Adams: There is one thing that isn't clear in my mind about the question. When you said an object 100 feet away from the bow of the "Sakito", I assume that you meant 100 feet from her projected course. If you had another course 100 feet away which ran parallel—

The Court: As I understand it, it is a question of the maneuverability of the "Sakito Maru", as to what distance it would take to move it one way or the other. Let me ask the witness this question: How far away would you have had to have been from the "Olympic" in order to have maneuvered your ship to have avoided it, assuming that you were at the time headed for amidships?

A. I don't understand your Honor very well.

Q. Assuming that this is the "Sakito Maru", and you sighted the "Olympic" ahead of you, and

(Testimony of Syunzi Sato.)

you were headed for its amidships, how far away from the "Olympic" would you have to be in order that you could maneuver your ship so as to avoid colliding with the "Olympic"?

A. In order to avoid that accident at 7:09 I gave the order hard to starboard; then full speed astern.

Mr. Adams: I don't think the witness understands the court in asking a hypothetical question.

The Court: I guess I will let you gentlemen ask the questions. He said 300 meters. If you have some other questions, you can bring it out on cross examination. [985]

Mr. Adams: If I may suggest that the witness be asked how much room he would need between his vessel and the "Sakito"—

The Court: Ask the question.

Q. By Mr. Adams: Captain Sato, assume that the "Sakito" approached the "Olympic" broadside, so as to hit her amidships, if the "Sakito" continued, how much room would you need, or how much distance separating the vessels would be necessary to avoid hitting the "Olympic", by putting the helm hard over? A. In order to stop the ship?

Mr. Adams: No; irrespective of anything you did with the engines.

A. Over 300 meters.

The Court: How much over?

A. Just a little; very little.

Q. By Mr. Adams: In order to bring out the full story on this point, I think the witness ought to

(Testimony of Syunzi Sato.)

be asked what difference it would make if the vessel were going at different speeds.

Mr. Cluff: You ask him if you want to.

Q. By Mr. Adams: Does the speed of the vessel have anything to do with the answer you just gave?

A. At the speed of 6 or $6\frac{1}{2}$ knots.

Mr. Adams: The answer was given with reference to that speed? [986] A. Yes.

The Court: Suppose you were going one knot and a half an hour, would your answer be any different?

A. I think it is about the same. Of course, the time would be different in that distance.

Q. By Mr. Cluff: Captain, what speed does the "Sakito" have to have before she has got even steerageway?

A. About 5 or 6 knots before she would answer.

Q. In a knot and a half she would not answer her helm at all, would she?

A. I don't say that it wouldn't be answered, but it would be more difficult than it would at the other speed.

Q. Captain, assuming you are pointing broadside at an object, and you are going $6\frac{1}{2}$ knots slow ahead, and you reverse both engines, how long does it take to stop dead in the water?

Mr. Adams: May I have the question?

(Question read by the reporter.)

A. 250 or 300 meters.

(Testimony of Syunzi Sato.)

Q. By Mr. Cluff: Captain Sato, let us get this gyro record cleared up a little bit. I am going to lead him a little bit on this, because I think it will speed up the explanation, and there is no dispute about it.

Captain, here you are going on 340 true; this little extra wiggle, at 7 o'clock, that was probably when one quartermaster left, and the other quartermaster took up? [987]

A. Yes, the time they changed.

Q. The time they changed wheels she fell off a degree or two? A. Yes.

Q. About 7:09, 7:10, she turned sharp within a minute 10 degrees to her starboard? A. Yes.

Q. And then they turned her to a heading of about 350 true? A. Yes.

Q. And then she swung back about 30 degrees to port? A. Yes.

Q. Where do you think the point of collision was? Where was the point of impact?

The Court: He has testified to that.

Q. By Mr. Cluff: Captain, after the anchor was dropped at 7:17, that would be just about here, wouldn't it?

A. Wouldn't 7:17 be about there? This scale is so small, it is very hard to get a definite point. That would be about the point.

Q. Here is what I want to clear up. Up here at about 7:30 it gets to the end of the tape, and starts back, but both going out to the end of the tape and back, that is still a swing to starboard, isn't it? Maybe we can come to this by stipulation.

(Testimony of Syunzi Sato.)

Mr. Adams: I was wondering what possible materiality that has, after 7:30. [988]

Mr. Cluff: I wanted to make it clear, so that it would not be confusing.

Mr. Adams: Change the quadrant.

Mr. Cluff: The stop is in the fourth quadrant. At this point, in approaching the end of the tape, it would swing the bow to starboard; the V is swung in the same direction, but it wouldn't be perceptible at all.

The Court: What difference would it make, after that?

Mr. Cluff: It wouldn't make any practical difference, except I wanted to make it clear, and not have it confusing.

The Court: The thing I want to know is, is there anything in that graph that would indicate the distance that this ship traveled after they changed their course, and swung over to the point of the collision.

Mr. Cluff: I think the graph is entirely too fine to get anything within a minute, from it.

The Court: Then there is no way to determine the distance?

Mr. Cluff: Nothing, but the testimony of the witness.

The Court: In other words, we haven't any mechanical device that will help us, of course?

Mr. Cluff: Mr. Black knows a great deal more about the gyro than either of us.

(Testimony of Syunzi Sato.)

The Court: The court has to rely upon the testimony of the witness?

Mr. Cluff: I think we would all agree, Mr. Black, [989] that we couldn't read that within a minute or at least a half a minute?

Mr. Black: I think even with an enlargement, that is true. It is a little easier to estimate it with a photostatic enlargement. You can take the dividers, and if you can get the middle of this line, remembering the distance between the horizontal lines is 10 minutes, you can, of course, come to a fairly close approximation, with the enlargement of it.

The Court: Is each one of these lines 10 minutes?

Mr. Black: No.

The Court: The other lines?

Mr. Black: The degree lines, 10 degrees, the vertical line.

The Court: So there is no way to determine by this graph the distance that the boat would travel after he gave it the signal?

Mr. Black: No; it does not measure distances at all. It only determines time. In other words, if the vessel were standing still, the graph would be just the same; it just shows the changes in the headings. You would have to know what the engines were doing independently, to get any distance.

The Court: This enlargement does not show any lapse of time?

(Testimony of Syunzi Sato.)

Mr. Black: It is pretty close to a minute between the [990] beginning of that swing to the end of it; it might be just a trifle more than that.

The Court: Then may I make inquiry of you gentlemen: Is there anything in the record here that determines the distance that the boat changed its course in that minute, assuming it was a minute?

Mr. Cluff: Yes; we can tell that.

Mr. Adams: We know it changed its heading 10 degrees.

Mr. Cluff: That is the heading; not the course.

The Court: The point I am getting at is this: Assuming that is the "Olympic", and this boat was approaching, the testimony is that she struck about amidships, isn't it?

Mr. Cluff: Yes. [991]

The Court: Now, if that signal had not been given, where would the impact have taken place?

Mr. Cluff: That was why I was trying so hard to get the heading.

Mr. Adams: Let us ask the witness what he thinks about it; in other words, if you had not put the helm hard over, where would the stem have struck the "Olympic"?

Mr. Cluff: Let us see if we can't bring that out. There is one more thing about the gyro, Captain. That is not exactly to the second with the ship's clock? A. No, not to the second.

Q. That is, when you set the tape, you turn the tape back or pull it forward when you retard or

(Testimony of Syunzi Sato.)

advance the time; it is like setting one clock from another, isn't it? A. Yes.

Q. It might be as much as a half a minute out?

A. It is done by hand, but I think about a minute.

Q. It might be a minute out?

A. Yes, about a minute.

Q. Captain, if you had not put the wheel hard to starboard and you had not reversed engines, but had just gone straight ahead, at what point on the "Olympic" do you think the "Sakito Maru's" bow would have hit?

A. If I hadn't given any orders at all?

Q. Any orders at all, but had just gone right ahead.

A. At that time, I couldn't tell, but after the [992] investigation, I think it would have hit a little to port.

Q. That is, a little further toward the bow?

A. No, I think about that point.

Q. Indicating the point marked by the witness with a little arrow to the port side of the figure.

A. That is only my impression.

Q. About how many feet do you think that would have been, Captain, from the point where you actually hit?

A. It is very hard for me to estimate anything like that—calculate it.

The Court: Gentlemen, the testimony is that the boat was brought down from $6\frac{1}{2}$ knots an hour to

(Testimony of Syunzi Sato.)

a knot and a half an hour at the time of the impact?

Mr. Cluff: Yes.

Mr. Adams: Either a knot or a knot and a half.

Mr. Cluff: Yes, that is the testimony.

The Court: Going at one knot an hour, that would be 100 feet a minute?

Mr. Cluff: Just about, roughly.

The Court: A knot and a half would be going at 150 feet a minute; and the evidence indicates that fully a minute elapsed from the time that he gave the signal to the time of the impact; that is, the graph.

Mr. Cluff: Gave the turn of the wheel.

Mr. Black: The end of the right swing, the graph demonstrates only that much; it does not show conclusively [993] where, in that heading, the collision occurred.

Mr. Adams: There was an interval of time, before the heading started to change, that was consumed by the execution of the order.

The Court: In other words, the graph shows the result of the execution, and not the execution, so that the graph shows when the boat started to swing.

Mr. Cluff: And when it stopped.

The Court: When it started to swing; I believe the testimony is that he stated it would take about ten seconds after he gave the order before it received the effect of the order.

Mr. Adams: I don't recall exactly.

(Testimony of Syunzi Sato.)

The Court: And that the boat was actually starting its movement to starboard, at least one minute before the collision. I think that would be a fair interpretation of the graph, wouldn't it, Mr. Black?

Mr. Black: I don't think you can say the graph shows that. All it shows is that the vessel started to swing to the right about a minute before it completed its right swing and the testimony fixes the point of collision.

The Court: Let me have the enlargement. I would like to ask you gentlemen some questions for the purpose of an understanding of this testimony, to see if we agree on it. This is the point of impact?

Mr. Cluff: That is what the master testified to. [994]

The Court: I am trying to understand this witness' testimony. This would indicate that he changed from 340 to—

Mr. Cluff: A little over 350.

The Court: That would be 5 between?

Mr. Black: Yes. These are each a degree.

The Court: So it would change to a little over 10 degrees? Does that mean that the heading of the boat had actually changed 10 degrees from this point?

Mr. Black: Yes.

Mr. Adams: That is correct.

Mr. Cluff: We all agree to that.

The Court: So that the order to execute it must

(Testimony of Syunzi Sato.)

have been given some time just before that heading was changed?

Mr. Adams: Yes.

Mr. Black: This much must be borne in mind, that the graph will show the same change of heading, whether the vessel simply swung and did not leave her track, or whether she actually left the track; in other words, it only shows a change in heading; not the change in course.

The Court: In other words, the vessel might not have left the course.

Mr. Black: The first thing is, when he puts his wheel over, the stern kicks away in the opposite direction. That would be shown almost immediately on that graph, because it shows a change of heading just as much, whether the vessel is [995] leaving the track, or not leaving the track. In other words, it would start to register just as soon as she started to pivot, even though it would be ranging along its course.

The Court: In this case we have considerable oral testimony as to the effect of the change. There is considerable oral testimony from those on the barge that the "Sakito Maru" apparently—and some testified that might have been an optical illusion—that the vessel had changed its course somewhat.

Mr. Adams: It swung to port.

Mr. Chuff: It looked as though it changed to port. Most of them testified that they saw it turn toward the barge.

(Testimony of Syunzi Sato.)

Mr. Adams: In other words, several said that they were not sure whether it was an optical illusion or not, but they testified it swung to port first.

The Court: What I am interested in is finding out, if it is possible, through these mechanical devices, to help the court determine the location. There is testimony to the effect that if the "Sakito Maru" had continued its course it would probably have not hit the barge, but that the change in the course was the cause of the collision.

Mr. Adams: Might I make a statement on that?

The Court: Yes.

Mr. Adams: I have read the transcript of these witnesses, and they stated they had the impression that she [996] swung to port, and then qualified their statement by stating that it might very well have been an optical illusion. Those witnesses who were on the "Point Loma", and on the "Clark", and on the "H-10" water taxi, alongside the "Point Loma", and who were behind the "Olympic", and therefore had the "Olympic" directly in line with the "Sakito" as she approached, all agree that they saw no change of course. Leonard Smith, under direct examination here, thought that there was a change, but on cross, after we showed him the diagram that he drew on the night of the collision, I think the evidence is clear that he thought the "Sakito" was coming straight.

Mr. Cluff: It is our position that the witness Johnson, and two or three others, testified that when

(Testimony of Syunzi Sato.)

they first saw the "Sakito" they had no apprehension of collision. Those are laymen, and don't know how a ship handles. Then they testified that she turned toward them, and they did have an apprehension. We contend that this graph shows that for at least a minute the ship was completing a very definite 10-degree swing, and she might have, in that time, proceeded two or two and a half lengths, depending entirely on the speed, and the only evidence of the speed is the objective testimony of witnesses who watched her, and the testimony of the Captain as to the speed at which she was going.

The Court: Assuming that she was going 6½ knots an hour, a minute and a half before the collision, 7:09, in a [997] minute and a half she brought her speed down to say a knot and a half an hour. He said that it was a knot or a knot and a half an hour that she was going at the time of the impact.

Mr. Adams: That is correct.

Mr. Cluff: She could not have possibly traveled through the water over a length.

Mr. Adams: The witness testified that at the time of the impact her speed was brought down, he estimated, where she was going a knot or a knot and a half.

Mr. Cluff: Yes.

The Court: As I understand the witness it would take about two lengths of the boat to bring it to a complete stop. I am speaking from memory now.

(Testimony of Syunzi Sato.)

Mr. Adams: No, it was a length and a half or two lengths; as he later expressed it, 250 or 300 meters.

The Court: 300 meters would be 984 feet and the boat was a little over 500 feet long.

Mr. Adams: That is correct. It was 150 meters point something long. The over-all was 556 feet.

The Court: So she traveled practically her two lengths. I am going to let you gentlemen do the arithmetic in your argument. I am trying to clarify this so that I can understand the testimony better.

Mr. Cluff: At $6\frac{1}{2}$ knots she would travel about a length in a minute. [998]

Mr. Adams: We will be able to give the court a speed table, rather a distance table, showing the number of feet traveled at any given knots. I will be glad to do that right now.

The Court: The thing that impresses me is that according to the chart she traveled for a period of about one minute after the order took effect, and that in that time she diminished her speed from $6\frac{1}{2}$ knots an hour to a slow walk.

Mr. Adams: If the court please, she had a minute and a half; it might have taken a half a minute before that heading was changed. Of course, we are dealing in very fine particulars here; even Mr. Black says that you couldn't estimate with any degree of accuracy.

The Court: The testimony was that a minute and a half elapsed from the time they sighted the ship until the time of the impact.

(Testimony of Syunzi Sato.)

Mr. Adams: Yes.

The Court: At that time it was going $6\frac{1}{2}$ knots an hour.

Mr. Adams: No, he said $6\frac{1}{4}$ or $6\frac{1}{2}$.

The Court: And in a matter of a minute and a half it reduced that to about a knot or a knot and a half an hour.

Mr. Adams: That is correct.

The Court: At that time, a boat moving not over a knot and a half an hour, is only moving as fast as a slow walk.

Mr. Adams: That is right. [999]

The Court: Going at $6\frac{1}{2}$ knots an hour, how far do you say it would travel a minute?

Mr. Cluff: 650 feet.

Mr. Adams: 6 knots would be 608 feet; 7 knots would be 709 feet.

The Court: It would be about 650 feet a minute, and yet that boat would have had to have traveled another 350 feet to have stopped, going at a knot or a knot and a half an hour.

Mr. Adams: No, if the court please, I think the testimony of the witness is this: If there was no obstacle ahead; if the "Olympic" wasn't there, and if the "Sakito" was proceeding at a speed of $6\frac{1}{4}$ to $6\frac{1}{2}$ knots, and the engines were put full astern, as they were, she would have been brought to a dead stop—her headway would have been absolutely checked from 250 to 300 meters of the point where that order was executed.

(Testimony of Syunzi Sato.)

The Court: Assuming that she would have stopped in 300 meters, that means that she would have stopped in virtually 1,000 feet—984 feet, and in 650 feet she had reduced her speed from $6\frac{1}{2}$ to a knot and a half; she had reduced her speed 5 knots in two-thirds of the time, and it would take one-third to reduce it the other.

Mr. Adams: It might very well be.

Mr. Cluff: I would like to offer in evidence the diagram we have been working with here all morning. [1000]

The Court: It will be admitted.

The Clerk: "Olympic" No. 14.

B.

Olympic



No. 1138-159 atm
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
JUL 13 1942

PAUL P. O'BRIE

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1138-159

340

(Testimony of Syunzi Sato.)

Q. By Mr. Cluff: Captain, something at the time of the impact abruptly stopped the swing of the "Sakito", stopped the swing of the "Sakito's" bow to starboard, or, let us say, swung the stern to port. What was that, if you can tell?

A. Do you mean by that question why did it stop, the "Sakito's" stern swinging to port?

Q. And started to swinging the other way; what happened?

A. As I explained to you heretofore, after the "Sakito" hit the "Olympic", that naturally would stop the momentum of the ship, and then that would also stop the swing of the ship, and then, on account of the "Olympic" shifting, after that incident happened, because the power of the port engine was more than the starboard engine; then after that it depended on the tide and other things.

Q. But anyhow, all these things contributed to stop the swing of the stern to port, and started it swinging to starboard?

Mr. Adams: I object to that as assuming facts not in evidence. It is just the opposite of that.

Mr. Cluff: If the thing was under starboard helm.

Mr. Adams: It started to swing to starboard.

Mr. Cluff: "Stern" was the term I was using.

A. Yes, for that reason. [1001]

Q. Between 7:09 and 7:11, when the engines were reversed, the port engine made 150 revolutions and the starboard 120, according to the engine room records; that is right, isn't it? A. Yes.

(Testimony of Syunzi Sato.)

Q. Is that the reason why you think the port engine was going faster than the starboard?

Mr. Adams: Just a minute, if the court please; I object to that as assuming facts not in evidence. The witness never testified that he thought the engine was going faster. He testified that one engine turned more revolutions than the other. It is very clear that one engine might turn longer than the other.

Mr. Cluff: That is just what I wanted to bring out.

Mr. Adams: All right, but don't say that he thought that one engine was going faster than the other.

The Court: He said on the port side or the starboard side, I don't know which—on account of that, was one of the reasons for the boat swinging.

Mr. Adams: That is very correct, but he didn't say that it went faster.

Q. By Mr. Cluff: Captain, doesn't that difference simply mean that the port engine was either started earlier or stopped sooner than the starboard engine, or maybe both?

A. They stopped simultaneously; possibly at the same time; but the revolutions depend on the condition of the [1002] engines at that time.

Q. Captain, I happened to check the revolutions of the engine for the 20 hours before the collision, and I don't think in 20 hours there was a difference of 300 revolutions between the two engines.

Mr. Adams: I object to that. It is in the record.

(Testimony of Syunzi Sato.)

The Court: The court is wondering how long this cross-examination is going to last.

Mr. Cluff: I had hoped we would finish in an hour, your Honor.

The Court: I had greater hopes than that.

Mr. Cluff: I think in another half hour, if we can move along, if Mr. Adams will let the witness answer the questions.

The Court: I think you are taking up too much time in cross-examination. That is the way the court feels about it.

Mr. Cluff: If the court please——

The Court: I have made my statement. I don't care for any argument. I think you have taken up too much time, and the court is going to stop it pretty soon. You have got to get down to the point. You beat around the bush. Why don't you get down to the point? This witness knows what you are driving at a half an hour before you ask the question.

Q. By Mr. Cluff: Captain, when you stopped the swing of the stern of the "Sakito" to port, and started to swing to starboard, did the whole ship swing, or did she swing on [1003] her pivot point?

A. No, at that time the swing was different.

Q. That is, it swung on the "Olympic" as the fulcrum of the lever?

A. I think the forward part of the ship turned more.

Q. The forward part turned more?

A. Taking the center into consideration, the center of the swing.

(Testimony of Syunzi Sato.)

Q. That is, the forward part was the pivot of the swing?

A. You use the engines to swing the ship, then it turns on a center pivot but, in that case, it turns on the forward part of the ship.

Q. So it was swung more in the center of the forward part of the ship?

A. Yes, the forward part of the ship was the center.

Q. While it was making that swing, the bow was grinding into the inside of the "Olympic" to some extent, wasn't it?

A. No—yes, it swung when it entered the "Olympic", and then, with the force of it, it separated, and then swung as it was separated.

Q. I believe you testified the other day that you saw the boats separated at 7:11, when you stopped the engines? A. Yes, I did.

Q. Who executed the order on the telegraph to stop the engines at 7:11?

A. Do you mean that sound—— [1004]

Q. Yes, on the telegraph.

A. The chief officer.

Q. Then right after that you sent the chief officer to the forecastle head? A. Yes.

Q. But at the time that was executed, at 7:11, you could see the two ships separating, is that right?

A. No, it was after the ship had stopped that I saw them separating.

Q. After it had stopped, that is, after 7:11, a

(Testimony of Syunzi Sato.)

little after, your position was at that time inside the wheelhouse of the "Sakito"? A. I think so.

Q. How could you tell from that position in the wheelhouse that the vessels were separating a little after 7:11?

A. I was not standing there all the time. I was moving about.

Q. Where were you standing when you first saw the vessels were separating?

A. After they hit, I went to the starboard wing.

Q. As you stand on the bridge—I am showing you Yokota Exhibit 4—as you stand on the bridge, evidently, from where this photograph was taken—

A. I don't know where this picture was taken, or who took it.

Q. But that is the forecastle head of the "Sakito Maru"? [1005] A. Yes.

Q. That is about what you see when you stand on the center of the bridge and look forward, isn't it?

A. You can see more than that.

Q. You can see more than that? What part of the "Olympic" did you see when you saw them separating?

A. I was standing on the starboard wing of the bridge when I saw it.

Q. What part of the "Olympic" did you see?

A. I could see the starboard part very clearly, and, naturally, the port I couldn't see as clearly.

Q. Could you see the hole that the "Sakito's" bow had made in it?

A. No, I didn't see that.

(Testimony of Syunzi Sato.)

Q. How could you tell that they were separating?

A. I saw the movement of the ship, and I could tell by that.

Q. Did you ever stand on that lookout platform up in the bow of the "Sakito"? Did you ever stand yourself up there on the lookout platform?

A. On that day?

Q. Any time. A. Yes, I have.

Q. How high does the top of the bulwark of the bow come on your body?

A. About up to my chest. [1006]

Q. About up to your chest?

A. About in the middle of the chest.

Q. Neither the time of the collision nor the time of the sinking of the "Olympic" were entered in the deck log, or the rough log, were, they, Captain?

A. What?

Q. Neither the time of the collision, 7:10—

A. No, it was not.

Q. Neither times are in there, and those times were put in the smooth log some time that afternoon, that is true, isn't it?

A. Yes; we can do that, referring to the deck log.

Q. What is there in the deck log that tells you when the "Olympic" sank?

The Court: That speaks for itself, doesn't it, counsel?

Mr. Cluff: There is nothing here.

The Court: The exhibit speaks for itself.

(Testimony of Syunzi Sato.)

Mr. Cluff: Very well. [1007]

Q. By Mr. Cluff: After you came to anchor, Captain, how far were you from the place where the "Olympic" went down?

A. About a hundred meters.

Q. About a hundred meters. And you could watch there clearly and see the little boats around attempting rescue?

A. You mean after the "Olympic" had gone down?

Q. Yes. A. Yes; I did see it.

Q. After you got a chance to take a look around there about 7:17, did you see any other barges at anchor? A. You mean at 7:17?

Q. At 7:17.

A. No; at that time I couldn't see, did not see any.

Q. Why was that, on account of fog?

A. It was on account of fog; and furthermore, I have no recollection as to the time when I did see another boat.

Q. But later, some time later you saw two other barges, two smaller barges at anchor there?

A. Yes; I did.

Q. Your position at anchorage there was less than the length of the ship from where the "Olympic" went down?

The Court: Mr. Reporter, will you read that question?

A. As I have already testified, it was around 100 meters.

(Question and answer read by the reporter.)

(Testimony of Syunzi Sato.)

Mr. Cluff: I have no further questions. [1008]

Cross-Examination

Q. By Mr. Black: Captain, have you ever been present on the "Sakito Maru" when a test was made over an actual measured course to determine the distance within which the vessel could be brought to a full stop from slow ahead by putting the engines full astern?

A. No; I never have tested it.

Q. And is your estimate of 250 to 300 meters based on your own experience with the vessel, or from some data from the naval architect?

A. To my experience, and also the records of the ship yards.

Q. Do you have any records that show the speed curves of the vessel under various actual maneuvers?

A. I haven't got them with me now.

Q. Did you ever have a record that showed precisely that measurement? A. Yes; I have.

Q. Why do you say a range between 250 to 300 meters if there was an exact test made giving a precise distance?

A. The records of the shipyards are when the conditions and everything are just right. At that time the ship was loaded and the conditions were different. That is why I cannot give you any exact figure.

Mr. Adams: If the court please, I wonder what the interpreter means when he says "at that time".

(Testimony of Syunzi Sato.)

I wonder [1009] what that refers to. I wonder if we can have that.

A. The time of the collision.

Mr. Black: I will ask counsel if they ever saw these records of which the witness speaks; and if so, whether they can produce them.

Mr. Adams: We do not have them with us. I have not seen them. I have been told that they are aboard the ship. I have been told that the ship is in Japan. I have never been requested heretofore for them by any counsel in the case.

Q. By Mr. Black: Just prior to sighting the "Olympic", or within the time that you were on the bridge before you saw the "Olympic", I meant to say, did you hear or see any passing steamers?

A. I didn't see anything when I saw the "Olympic".

Mr. Black: That is all.

Mr. Cluff: I have one further question, if I may.

Further Cross-Examination

Q. By Mr. Cluff: Captain, did you hear the fog horn on the breakwater prior to the collision?

A. No; I did not.

Q. Were you listening for it?

A. I didn't hear it.

Mr. Cluff: I asked him if he was consciously listening for it. [1010]

A. I was using all my efforts to try and hear that fog horn.

Q. Captain, what is the minimum visibility at

(Testimony of Syunzi Sato.)

which you continue to operate the ship in the vicinity of a harbor?

A. What do you mean by that?

Q. Is it your practice to continue to run the ship when visibility drops below 200 meters?

A. It depends on the time and the conditions, the conditions at that time.

Q. With what visibility would you continue to run, approaching within four miles of the Los Angeles breakwater?

Mr. Adams: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

The Interpreter: Would you repeat that, please?

(Question read by the reporter.)

A. I don't understand your question.

Q. By Mr. Cluff: Would you continue to run the ship within four miles of the Los Angeles breakwater if the visibility was as low as 200 meters?

A. Don't you mean by that what speed I would have the ship running?

Mr. Cluff: I don't understand his answer.

Mr. Adams: When you say "running", Mr. Cluff, that word might be a little confusing. [1011]

Q. By Mr. Cluff: Well, would you continue, if you were approaching the ship today within four miles of the Los Angeles Harbor, would you continue to run the ship or would you drop anchor?

A. If it was at 200 meters, I would reduce the speed of the ship.

(Testimony of Syunzi Sato.)

Q. You would not anchor, though?

A. It depends on the time and the conditions at that time.

Q. If your visibility were less than 200 meters, you would still continue to run under reduced speed?

A. Possibly I would stop the ship, or possibly I might drop the anchor.

Q. Now, Captain, did you have in mind that morning, the morning of the collision, that you might somewhere out there find another merchant ship that had dropped anchor on account of the fog?

A. I thought that possibly there might be one.

Q. You had that in mind? A. Surely.

Q. Now, had you made any preparations at all to drop your own anchor in case the fog got thicker?

A. Not at that time it had not been.

Q. You had not called a carpenter or sent any of the crew to the forecastle head?

The Court: Well, he has already testified to that. [1012]

Mr. Cluff: I don't think he testified to that, do you?

The Court: You asked him that before.

Mr. Cluff: Well, he said he made no preparation to drop the anchor. That is all.

Redirect Examination

Q. By Mr. Adams: Captain Sato, you testified just a moment ago that you anticipated that you might come across some vessel that had anchored there. What precautions were you taking, if any,

(Testimony of Syunzi Sato.)

to ascertain whether there was such a vessel at anchor in your course?

A. I gave a strict order for a lookout and to the lookout, and also to keep listening for the fog horns of the other ships, if there are any fog signals.

Q. What are the fog signals for a vessel that is at anchor? A. That is a bell.

Q. And if she is—

A. One bell within a minute. That means that that continuously for five or six rings.

Q. And you were listening for such signals, were you?

A. Yes; I had made the preparations that possibly we might hear a signal of that kind from another ship.

Q. Did you hear any before you sighted the "Olympic"? A. No; I did not.

Q. Just before the collision did you hear any such [1013] signal?

A. I heard the sound of a bell just before the collision.

Q. Describe that sound.

The Court: He has testified to that three or four times, counsel, that he heard the continuous ringing of the bell immediately prior to the collision.

Mr. Adams: If the court please, I wanted to develop that. That is preliminary.

Q. Prior to the collision you did hear the continuous ringing of a bell just before the impact, did you not?

A. I heard a bell ringing continuously.

(Testimony of Syunzi Sato.)

Q. Did you hear that bell clearly at that time?

A. I have no definite recollection of that, but I have a recollection that I heard some bell.

Q. Well, do you think that you would have heard that bell before you did hear it had it been ringing in that manner?

Mr. Cluff: Just a moment. I object to that question as utterly unintelligible.

The Court: It can be answered. As far as this court is concerned, it hasn't any weight what he thinks he may have heard.

Mr. Adams: If the court please, he is in a position to estimate how loudly it was ringing when he first heard it and he can estimate whether he would have heard it had [1014] he been a little further away by the sound he heard at that time.

The Court: You gentlemen all know that this negative testimony does not bear much weight, on both sides; it is true on both sides.

Mr. Adams: Of course, my point is to demonstrate, if the court please, that if the bell had been sounded hard and continuously like Ohiser said it was when the vessel seemed to turn, if that had been done before, that there would have been that warning to the "Sakito Maru" that much before.

Mr. Cluff: That is not the law. The law does not permit us to ring the bell——

Mr. Adams: There are certain rules, general precautionary rules and certain circumstances——

The Court: Gentlemen, we are not going to have

(Testimony of Syunzi Sato.)

any argument. I am not going to dwell too much in the realms of imagination.

Mr. Adams: The objection is sustained to that question?

The Court: No. I said he could answer it, but I just tell you that, as far as this court is concerned, I am letting the answer in to the benefit of any reviewing court. So far as this court is concerned it is absolutely worthless, the answer.

Mr. Adams: Would the reporter please read the question?

(Question read by the reporter.) [1015]

A. You mean from where? Where did you mean from?

Q. Well, before you did hear it, as the "Sakito" was approaching.

A. I think I would have heard that bell before I sighted, if it had been ringing, before I sighted the "Olympic".

Q. What was the direction of the wind around 7 o'clock, if you know?

A. The force was northeast—the direction. Oh, the force was one.

Q. And the direction of the wind was what?

A. Northeast.

Q. It was coming from the northeast, was it?

A. Yes.

Q. Force one.

Q. You testified, Captain Sato, that when you estimated that the barge was 200 meters ahead after you saw it, such a distance was measured from the stem of the "Sakito"?

(Testimony of Syunzi Sato.)

A. Yes; from the stem.

Q. You testified also that before you saw the barge you believed at that time that the visibility was about 300 meters?

A. No; I didn't say that. I figure that the visibility at that time was about 300 meters.

Q. And did you figure it was 300 meters from the stem?

A. That was 200 meters from the stem. [1016]

Q. Well, he estimated visibility before he saw the barge, he thought, was 300 meters. Is that measured from the stem? A. From the stem.

Q. Is it hard or difficult to measure visibility in fog? A. Very difficult.

Q. How do you account for the fact that before you saw the barge you thought the visibility was 300 meters, but after you saw the barge you saw it was only 200 meters ahead?

A. That is figured on the visibility of the stem of the ship and to the stern of the ship, and according to that is the way the visibility is figured, and figuring it on two lengths of the ship, I figured it to be 200 meters.

Mr. Adams: That is not an answer to the question. I wish the reporter would please read the question.

(Question read by the reporter.)

A. Looking from the bridge to the forecastle head, and then as I had seen it a little beyond the forecastle head, that was the way I came to my figures.

(Testimony of Syunzi Sato.)

Mr. Adams: That is not yet an answer to my question, Captain.

The Court: Counsel, you might explain to the court by having the witness explain to the court. As I understand it, the lookout sighted the "Olympic", his estimate was 200 meters away at the time he sighted it, and the Captain immediately sighted it and he was 265 meters away from the [1017] boat, so that the Captain's visibility must have been 265 meters at that time.

Mr. Adams: That is correct. He said he sighted—

The Court: His estimate was 300; but the lookout didn't see it, and the Captain saw it 65 meters ahead of the lookout.

Mr. Adams: No. If the court please, he said that before he sighted the barge—

The Court: I mean the visibility, according to the Captain, was 65 meters greater than the lookout's, wasn't it?

Mr. Adams: No, if the court please. Before he sighted the barge he thought the visibility was 300 meters ahead of the ship from the stem; he thought he could see that far. Then when he did see the barge he estimated that she was only 200 meters ahead of the stem.

The Court: As I understand it, he said that the estimate of visibility was 300 meters from where he stood.

Mr. Adams: From the stem.

The Court: From the stem?

(Testimony of Syunzi Sato.)

Mr. Adams: That is correct, that is correct.

Mr. Cluff: He said "200" once, and then "300".

Mr. Adams: He said when he saw the barge he estimated that the barge was 200 meters ahead. [1018]

The Court: Yes; I got that part, but I understood that he estimated the visibility at the time of his estimate was 300 meters.

Mr. Adams: Yes; before he saw the barge.

The Court: Just before he saw the barge it was his estimate it was 300 meters. That would not be 300 meters ahead of the bow, would it?

Mr. Adams: Yes. That is what I asked him just a few moments ago, if that computation was made, or estimate was made—

The Court: All right, proceed.

Mr. Adams: Now what I am trying to get at is how he accounts for the fact that he thought it was 300 meters before, but after he saw the barge he estimated it was only 200 meters ahead. Captain Sato, you still have not answered the question I asked you. I am going to reframe it.

Q. You said that before you saw the barge you thought you could see 300 meters ahead of the stem of the "Sakito"? A. Yes.

Q. But then, when the lookout shouted the warning and you saw the barge, which appeared to you dimly out of the fog, you estimated that the barge was 200 meters from the stem at that time.

A. Yes.

Q. Do you think that your prior estimate of visibility before you saw the barge was in error, or how do you account [1019] for the fact that you did not

(Testimony of Syunzi Sato.)

see the barge when you were 300 meters from the barge?

A. Possibly it is an error in my estimate, and then in the neighborhood and around the barge, possibly on account of the thick fog.

Q. Which you had not previously encountered, you mean?

A. What do you mean by that?

Q. I will withdraw the question. Do you mean that it was thicker around the barge than you had previously seen it before?

A. Yes; possibly that was the reason, too.

Q. If the "Sakito" were going ahead at slow ahead at $6\frac{1}{4}$ or $6\frac{1}{2}$ knots and the engines were put full astern do you think the "Sakito" could be brought to a stop within 300 meters?

The Interpreter: Will you give me the question again?

(Question read by the reporter.)

A. Yes; I think it would stop at 300 meters.

The Court: How long is the redirect going to continue?

Mr. Adams: I think, if the court please, about 10 or 15 minutes.

The Court: Well, we will continue right through until we finish with it.

Q. By Mr. Adams: Captain Sato, I show you a chart which is No. 5143, which contains on it some pencil notations consisting of a point or a pencil marking with a circle [1020] around it, and then several intersecting lines. What does that mark represent?

(Testimony of Syunzi Sato.)

A. That is the position of the ship after the impact and where it was anchored, the anchorage.

Q. Is this chart that you have before you now one of the charts that you had aboard the vessel at that time? A. Yes; I did have it.

Q. Were those markings that you have just spoken of made on this chart after the bearings were taken that you mentioned?

A. Right after we had taken the bearings.

Q. And how many bearings did you take at that time?

A. This line indicates the bearing of the lighthouse—

The Court: Answer the question. He asked you how many bearings you took.

Q. By Mr. Adams: How many?

A. Three.

Mr. Adams: I offer this chart in evidence.

The Court: All right; "Sakito's" next number.

The Clerk: "Sakito" N.

(Testimony of Syunzi Sato.)

Mr. Adams: May I have that other chart, Mr. Wire? The other chart, if the court please, is in the clerk's office. I will endeavor to ask the witness questions about it, without the necessity of getting it.

Q. Do you remember on the other chart which is in evidence here and which was a working chart of the "Sakito"—[1021] I forget the exhibit number—that there was a mark on it indicating where the "Sakito" had anchored?

A. Yes; there is.

Q. Was that place of anchorage put on that chart after these bearings were taken that you have just mentioned in connection with this last chart?

A. That is right. After these bearings were taken then it was placed on that chart.

Q. In other words, that position was a transfer of the location that you have indicated on this chart, from this chart to that chart, is that correct?

A. Yes; that is correct. It was transferred from this chart to the other chart.

Q. And when you say "the other chart", now, you mean—

The Court: He has answered the question, counsel.

Mr. Adams: I just want the record to show that when he says "the other chart" he means "Sakito's" exhibit number—

The Clerk: K. A. Yes; that is right.

Q. By Mr. Adams: Captain Sato, you testified the other day that, from the photographs of the "Sakito" taken after the collision, it appeared that the

(Testimony of Syunzi Sato.)

stem was not bent in one direction or the other, is that true? A. Yes.

Q. In your opinion does that indicate anything with reference to whether the "Sakito" hit the "Olympic" [1022] broadside at right angles, or at angle in one direction or the other?

A. As close to right angles as possible.

Q. You were asked by Mr. Cluff concerning soundings. Why didn't you take soundings before the time that you struck the barge?

A. We knew the position of the ship at 6:00 o'clock, and at 7:00 o'clock we knew approximately what the position of the ship was, and in a big harbor like Los Angeles there is nothing dangerous, outside of the harbor, and there are no shallow spots, and rather than to take soundings, for correctness dead reckoning was much better; and in order to get them by soundings, it is very difficult.

Q. Captain Sato, if the "Sakito Maru" had not sighted the barge, and had not collided with it, when would you have sent the first officer to the forecastle head with the crew members to prepare the anchor?

A. If nothing had happened, I think that they would have gone forward to the forecastle a little after that, to make the preparation.

Q. In your opinion would that have been time enough to have sent them forward for that purpose?

A. Yes, I think that would have been enough.

Q. By the Court: Where did you expect to pick up a pilot?

A. About a half or one mile from the breakwater. [1023]

(Testimony of Syunzi Sato.)

Q. By Mr. Adams: You expected, Captain Sato, that eventually you would hear the diaphone, did you not?

A. If I had gone a little further I might have heard it. I expected to hear it.

Q. What was your plan with reference to navigation after having heard the diaphone?

A. After I heard the diaphone, if the condition of the fog was good, was all right, I would approach the entrance. If it was bad, possibly I would have stopped there, and possibly I might have backed up a little bit.

Q. You testified that after the impact the "Sakito" moved forward about 20 to 30 meters from the point of the impact to the point where she finally came to rest? A. Yes.

Q. How far do you believe the "Olympic" moved before she came to rest?

A. Do you mean after my ship had stopped, and the "Olympic" had moved?

Q. After your ship came to a stop, how much further did the "Olympic" move?

A. I haven't any definite recollection.

Q. Can you give us a sort of an estimate?

The Court: He says he doesn't know.

Mr. Adams: I withdraw the question.

Q. At any time prior to the collision, or even at the time of the collision, did you know what type of vessel the [1024] "Olympic" was?

A. I was not positive.

Q. What did you think it was?

(Testimony of Syunzi Sato.)

The Court: I don't care what he thinks. I want to know what he knows.

Mr. Adams: Well, the impression that she made upon him, if the court please——

The Court: I don't care what he was thinking about. I want to know what he saw. Let him tell what he saw.

Q. By Mr. Adams: Before the impact what did you see of the "Olympic"?

A. Before the collision?

Q. Yes; describe the vessel that you saw at that time.

A. I thought it was a little different to the usual boat.

Q. Had you ever seen anything like it before?

A. No, I had not.

Mr. Adams: No further questions.

Mr. Cluff: I don't think we have anything more.

The Court: Does anybody else want to ask any further questions? All right. This witness is excused. We will take the recess until 2:00 o'clock.

(Recess until 2:00 o'clock p. m. of this day.) [1025]

Afternoon Session

2 o'clock

Mr. Adams: If the court please, Mr. Fall has presented me with the original of the decree of dismissal of the live in intervention of International Broadcasting Company and before court convened

we were in the midst of a discussion concerning the provision contained in this proposed order that each party to said action pay his own costs. There was a \$20,500 bond required in the Berger case and a \$10,000 bond required in this case which is dismissed, both covering the same equipment. I do not feel that we should have to waive our costs against the libelant in this case.

The Court: I do not see any reason why you should waive the costs, either.

Mr. Fall: Your Honor, the situation is not exactly as counsel stated. Mr. Berger had a great deal of additional equipment aside from the radio station.

The Court: I know, but the point is that you brought libel suit and now you are dismissing it and the opposite side is entitled to costs as a matter of course, isn't it?

Mr. Fall: Dismissing it for the reason that we have agreed and we have now agreed that Mr. Berger handle the suit in his name alone. Both the corporation and Mr. Berger had causes of action, separate causes of action against the "Sakito Maru" by reason of equipment that was [1026] owned by the corporation and equipment that was owned by Mr. Berger. Mr. Berger, in addition to his own equipment, brought the action for the equipment that had been assigned the corporation. There were two separate causes of action, but both——

The Court: I know, but you can only recover under your libel the property that belongs to you.

Mr. Fall: That is correct; and the International Broadcasting Company——

The Court: And any property that belongs to them, why, there is no suit pending for it.

Mr. Fall: I say, the International Broadcasting Company did own, and we contend, did own the equipment, that is, the radio station equipment. In addition to that—

The Court: Gentlemen, we are not going to take the time of this trial to argue that point out. I am not going to make any order that each side pay its own costs. If you can't agree on it I will take care of that on motion.

Mr. Adams: May we have a minute order entered for the time being dismissing the action and exonerating the bond?

The Court: I have already ordered it dismissed on the motion of counsel and exonerated the bond.

Mr. Adams: If the court please, we called Mr. Durkin to the stand—I believe it was Friday—to identify certain records.

The Court: Yes; I remember that. [1027]

Mr. Adams: Mr. Tatum, of our office, made an examination of those records, and from his notes prepared, we have compiled a typewritten exhibit. I don't know whether Mr. Cluff would wish to accept the statement from me as to what this exhibit is and the manner in which Mr. Tatum compiled it, or whether you would rather have Mr. Tatum take the stand.

Mr. Cluff: Go ahead and tell me what you are going to say and I will tell you.

Mr. Adams: Mr. Tatum examined the records which Mr. Durkin identified, and selected from the

arrivals shown in those records between May 10th and September 4th those vessels which approached Los Angeles Harbor northbound, that is, from San Diego and the Canal and other ports in that direction. He also on those various days selected the vessels which left Los Angeles Harbor southbound and has entered here on this list the name of each of those vessels, the port for which each was bound, or on the vessel's arrival here, the port of departure and the time noted in the pilot house records. Those are compiled day by day from May 10, 1940 to September the 4th.

Mr. Cluff: May I ask if you got the Australia and Honolulu bound ships, too?

Mr. Adams: No; and the reason for that was because we considered that their courses coming into Los Angeles Harbor did not bring them into Los Angeles Harbor on the [1028] courses that other vessels would follow approaching Los Angeles Harbor.

Mr. Cluff: All right; I will accept your list, whatever it contains.

Mr. Adams: Then I will offer it into evidence at this time.

Mr. Cluff: You have a copy for us, have you?

Mr. Adams: I am quite sure we have.

The Clerk: "Sakito's" Exhibit O.

Mr. Adams: I am quite sure I have the original. Just a minute, please. Before I forget about it, as the court will recall, at the time of our motion for a continuance certain statements were stipulated to, and we haven't made an offer of those records into the record up until this time, but, in

order that the record may be clear, I now offer the statements of the various witnesses, whose statements were stipulated to by the various counsel.

The Court: You might get them from the record; give the names.

Mr. Cluff: I will stipulate, so far as Hermosa is concerned, that the statements on file may be received in evidence; that is, if the witnesses were called, they would testify in accordance with the statements.

The Court: I think that is already stipulated to by all parties.

Mr. Adams: That is my understanding. I would like the [1029] record here to record that understanding.

The Court: Yes. Suppose you read the names into the record. I think you might have it deemed read, and the reporter may then write it up into the record.

Mr. Adams: That is agreeable to me, and I will read the names of the witnesses: T. Karasuda, First Engineer; A. Kanda, Apprentice Officer; H. Aono, Quartermaster; K. Nanba, Quartermaster; E. Yokoyama, Apprentice Sailor; M. Nakamura, Electrical Engineer.

The Court: They will be deemed read, the court having heretofore read them, and it is not necessary to read them aloud at this time.

Mr. Adams: And the reporter can copy them into the record?

The Court: Yes.

(Said statements are as follows:)

“‘Sakito Maru’—‘Olympic II’ Collision, September 4, 1940.

“Statement of T. Karasuda, First Engineer.

“T. Karasuda, First Engineer of the ‘Sakito Maru’, holds a Chief Engineer’s license and has held the same for about 12 years. He joined the ‘Sakito Maru’ in July, 1939.

“On September 4, 1940, he went on watch in the engine room at about 3:55 A. M. The men named in the statement of the Chief Engineer were on this watch and the others named came down to the engine room when the standby and slow ahead [1030] signal was received at 7:03. The Chief Engineer came down to the engine room about 6:55 A. M.

“At the time of the standby and slow ahead order at 7:03 A. M., Terasima operated the starboard engine and the First Engineer operated the port engine. These two men operated these respective engines also at 7:09 when the order was stop and full astern. At 7:11 when the order was stop, J. Hara, Junior Second Engineer, was at the port engine and K. Isii, Second Engineer, was at the starboard engine.

“After the First Engineer left the port engine following the execution of the stop and full astern orders at 7:09, he supervised the maneuvers made with reference to both engines thereafter. Hara continued to operate the port engine and Isii the starboard engine until the

vessel came to anchor at 7:19.5. Everything was in order in the engine room from 7:03 until 7:19.5 and all signals received on the telegraph were promptly executed.

“The First Engineer believes that after the stop engine order at 7:11 was executed, it probably required about 5 seconds for the reverse movement of the propellers to be checked. Prior to 7:03, while the vessel was proceeding at full ahead, the revolutions were approximately 118½. After the engines had been put at slow ahead at 7:03, the reduction to 50 revolutions, which are the number of revolutions for slow ahead, was probably reached before the elapse of 2 minutes after the execution of the slow ahead [1031] order.

“I have read the foregoing and the same is true and correct to the best of my knowledge and belief.

“Dated: 21st October 1940.

(Signed) T. Karasuda”

“‘Sakito Maru’—‘Olympic II’ Collision, September 4, 1940.

“Statement of A. Kanda, Apprentice Officer.

“Apprentice Officer A. Kanda has attended the Kobe Nautical School but has not yet graduated. He holds no license. He joined the ‘Sakito Maru’ in May, 1940. He went on watch at 3:55 A. M. on September 4, 1940. His primary duties are to act as lookout on the bridge

and to observe the conduct of the other officers in order to learn the duties of an officer. He took the bearings mentioned in the statement of the Chief Officer under the direction of the Chief Officer, using for this purpose a shadow pin (pelorus).

"The weather was clear up to about 7 o'clock A. M. but at that time it began to become misty ahead. He called the Captain at about 7 A. M. and then returned to the bridge and continued to lookout. Pursuant to the orders of the Captain, he commenced blowing fog signals at 7:03, operating a manual handle for that purpose. He sounded a single blast of about 5 seconds duration at one minute intervals. The length of the blast and the intervals were determined by intuition and were not judged by the clock. The Chief [1032] Officer had blown two fog signals before he commenced to sound the fog signals. He believes he sounded the whistle about 5 or 6 times before the barge was sighted. In addition to sounding the fog signals, he made entries in the deck memo book of the various orders given by the Captain.

"He saw the barge ahead after hearing the lookout's warning. He does not recall how far distant the barge was when he first saw it. He blew one fog signal before the collision after sighting the barge. When he later saw the barge more clearly, he also noticed one small boat on the other side of the barge. At 7:09, when the full astern order was given on the

ship's telegraph, the Captain sounded 3 blasts on the whistle. The times which he noted in the deck memo pad for the various orders were determined from a clock on the side wall of the wheel house. He went below to be of assistance when the No. 2 lifeboat was being lowered, but then returned to the bridge and stood by for orders.

"I have read the foregoing and the same is true and correct to the best of my knowledge and belief.

"Dated: Oct., 21, 1940.

(Signed) "A. Kanda"

"'Sakito Maru' — 'Olympic II' Collision, September 4, 1940.

"Statement of H. Aono, Quartermaster.

"Quartermaster H. Aono has been to sea since October, 1923, and has been aboard the 'Sakito Maru' since August, [1033] 1939.

"He went on watch at 4 o'clock A. M. on September 4, 1940, and stood his turn at the wheel from 5 A. M. to 6 A. M., steering a course of 340° true. Between 6 and 7 A. M. he made ready to hoist the flag and then returned to the bridge and stood by for orders. He took his turn at the wheel again at 7 A. M. and continued to steer a course of 340° true.

"A short time before the collision, the Captain ordered him to put the wheel hard to starboard. It requires 3½ turns on the wheel to

put the rudder over hard to starboard and he guessed that it took about 3 seconds to do this. He believed that the ship was just beginning to feel the effect of the hard to starboard rudder at the time of the collision. He was not in a position to see and did not see the barge prior to the collision. After the collision, he saw only the mast of the barge. He stayed at the wheel until after the 'Sakito Maru' came to anchor. After the collision he was ordered to return the wheel to midships and he kept the wheel to midships as the vessel backed.

"I have read the foregoing and the same is true and correct to the best of my knowledge and belief.

"Dated: Oct., 21, 1940.

(Signed) "H. Aono"

"'Sakito Maru' — 'Olympic II' Collision,
September 4, 1940.

"Statement of M. Nanba, Quartermaster. [1034]

"K. Nanba, Quartermaster, joined the 'Sakito Maru' in January, 1939.

"He went on watch on September 4, 1940, at 4 A. M. and stood his turn at the wheel from 4 to 5 A. M. and from 6 to 7 A. M. A few minutes after 7 A. M., he went to the forecastle to get some oil. He was at No. 2 hatch at the time of the collision. He did not hear any bells

or fog signals from any other vessels prior to the collision. Just prior to the collision, he saw the fishing barge from a position where he stood near the starboard side opposite No. 2 hatch. He heard the lookout on the 'Sakito Maru' yell the warning to the bridge. He also heard the fog signals of the 'Sakito Maru' sounded at regular intervals.

"The fog was not very dense when he went to the forecastle to obtain the oil. While he was at the wheel, he steered a course of 340° true.

"I have read the foregoing and the same is true and correct to the best of my knowledge and belief.

"Dated: Oct., 21, 1940.

(Signed) "K. Nanba"

"'Sakito Maru' — 'Olympic II' Collision,
September 4, 1940.

"Statement of E. Yokoyama, Apprentice
Sailor.

"E. Yokoyama, Apprentice Sailor, has been to sea since December, 1939, when he joined the 'Sakito Maru'.

"Shortly after 6:30 A. M. on September 4, 1940, he [1035] went on the forecastle head to do some cleaning. When he heard the first fog signal sounded by the 'Sakito Maru', he climbed on the platform at the bow without prior in-

structions from anyone and stood lookout. He had been standing there for only a few minutes when he was relieved by S. Simada, an A. B. He then remained on the forecastle head covering up some Manila rope at the after part of the forecastle head. He did not hear any bell or whistle from any other vessel at any time before the collision.

"When he first went to work on the forecastle head, the weather was clear. He later realized that fog was setting in, and it was about this time that he heard the first fog signal of the 'Sakito Maru'. He is unable to estimate the distance of visibility ahead after the fog set in. He heard the fog signals of the 'Sakito Maru', which consisted of single long blasts at regular intervals. After the collision, he went aft to help with the lifeboat which was being lowered.

"I have read the foregoing and the same is true and correct to the best of my knowledge and belief.

"Dated: Oct., 21, 1940.

(Signed) "E. Yokoyama"

"'Sakito Maru' — 'Olympic II' Collision.
September 4, 1940.

"Statement of M. Nakamura, Electrical Engineer.

"M. Nakamura, Electrical Engineer, holds an

Electrical [1036] Engineer's license. He joined the 'Sakito Maru' in February, 1940.

"He went down to the engine room on September 4, 1940, at 7 A. M., which was the hour that he usually reports for work. He made all entries in the signal book from 7:03 to 7:11, inclusive, with the exception of the entry made for standby at 7:03. This entry was made by Terasima because he was nearby. After this entry was made by Terasima, Nakamura took over making the entries. The time for the entries was ascertained from the engine room clock. All signals shown in the signal book were received at the times therein noted. The Third Engineer took over making entries in the signal book after 7:11 A. M.

"I have read the foregoing and the same is true and correct to the best of my knowledge and belief.

"Dated: 16th Oct. 1940.

(Signed) "M. Nakamura"

Mr. Adams: I will call Captain Arthur at this time. [1037]

FRANK D. ARTHUR

called as a witness on behalf of the respondents, being first duly sworn, testified as follows:

The Clerk: You will state your name.

A. Frank D. Arthur.

(Testimony of Frank D. Arthur.)

Direct Examination

Q. By Mr. Adams: Captain Arthur, where do you reside? A. San Pedro.

Q. What is your present occupation?

A. Port captain for a steamship company that operates tankers.

Q. What is that company?

A. Pennsylvania Shipping Company, Philadelphia.

Q. Are you port captain at this port?

A. Port captain for the Pacific Coast district.

Q. How long have you been engaged in that particular occupation?

A. A little over four years.

Q. Have you been in this vicinity during that period of time? A. Yes, sir.

Q. What is your experience at sea, Captain Arthur?

A. I started going to sea in 1912, and got my Master's license in 1926.

Q. What license did you get in 1926? [1038]

A. Master.

Q. That is, master mariner?

A. Master mariner.

Q. It permits you to be master of any vessel of any tonnage on any ocean?

A. Any vessel on any ocean.

Q. What types of vessels have you had experience aboard, either as master, as officer, or otherwise?

(Testimony of Frank D. Arthur.)

A. On mostly all types, including sailing ships, and general cargo steamships, but the last 15 years it has been practically all tankers.

Q. How many vessels have you commanded as master?

A. Seven different ships.

Q. That has been within the last 15 years, you say? A. Yes.

The Court: Since 1926.

Q. By Mr. Adams: What has been your experience aboard vessels on the intercoastal run?

A. I had about 7 years running intercoastal, off and on. I didn't run intercoastal all the time, but on an average of about three trips a year.

Q. By intercoastal, we mean, of course, some port on the Atlantic Coast to some port on the Pacific Coast. A. That is right.

Q. On occasions when you have come up from the Canal aboard vessels on the intercoastal run, what course have [1039] you followed north of San Bonitas Island approaching Los Angeles Harbor?

A. 340 degrees true.

Q. On occasions when you left Los Angeles Harbor southbound, aboard some vessel, what was the course followed after leaving the entranceway of Los Angeles Harbor? A. 160 degrees true.

Q. Where do you usually fix your position and set your course? A. Coming north—

Q. No, leaving Los Angeles Harbor.

A. Leaving Los Angeles Harbor, right outside the harbor entrance. [1040]

(Testimony of Frank D. Arthur.)

Q. Captain Arthur, in answering these questions I am about to put to you, please assume and consider that the "Sakito Maru" obtained a fix at 9:05 a. m., September 3, 1940, and at that time had San Benito lighthouse abeam, 14 miles off; also that the vessel thereafter steered a course of 340 degrees true; also that when the southeast end of Santa Catalina Island was abeam at about 5:58 a. m., September 4th, the vessel had set over to her left from the theoretical course of 340 degrees true, plotted on her chart; based upon your experience, state whether or not in your opinion such a set might normally be expected as a probable occurrence.

A. Such is normally expected, yes.

Q. Might that set be in any direction?

A. It might be in any direction at all.

Q. From your experience, what factors would be involved in causing a vessel to be set over from her theoretical course in that manner, under those conditions?

A. It might be caused by the surface currents, by the wind, or erratic steering.

Mr. Adams: May it please the court, I have here two charts, similar to those already introduced, one of which is numbered 5101; the other of which is on a larger scale, and numbered 5143. I have drawn on those charts, and particularly on chart No. 5101, certain lines indicating the courses 340 degrees true; 160 degrees true and 162 degrees true. [1041] I have also indicated certain distances between the lines

(Testimony of Frank D. Arthur.)

that I have drawn. I can ask this witness if he has checked those courses, and confirms those distances, or if Mr. Cluff is willing, I will offer the charts with the drawings on them, for what they purport to show, subject to his right to check them himself, and then if they need any correction, to bring that up.

Mr. Cluff: I suggest that you ask the witness what questions you want to ask about the charts. I am not going to question the navigation, or the fact that you made it up first. I think that saves time.

Mr. Adams: The only questions I am going to ask this witness is whether he has checked these courses, and taken the distances I have shown on the chart.

The Court: Ask him.

Q. By Mr. Adams: I show you chart 5101, on which I have marked certain courses, and I will ask you, Captain——

The Court: What is the red line?

Mr. Adams: The red line is printed on the chart. I will ask you if you have checked those courses with parallel rules to see if they are as indicated, either 340 degrees true, where indicated, or 160 degrees true, where indicated, or 162 degrees true, where indicated. Have you done so?

A. I have checked them, and found them just the way they are marked. [1042]

Q. Have you also checked the distance between the various courses laid out, to show 340 degrees true, to show that the lines are two miles apart?

(Testimony of Frank D. Arthur.)

A. I did.

Q. And that the two outer lines are four miles apart? A. That is right.

Mr. Adams: You will recall, if the court please, that the court asked for those charts to demonstrate various courses, and the area that counsel might think was involved with respect to vessels following 340 degrees true. It is an attempt to comply with the court's desire that I have prepared these charts, and I offer the charts in evidence.

Mr. Cluff: I don't think it is evidence of anything.

The Court: It is explanatory.

Mr. Adams: It is explanatory, like a blackboard diagram would be.

Mr. Cluff: I have no objection, if you are going to have somebody testify from the chart.

Mr. Adams: This chart I am offering now is the one I mentioned as 5101.

The Clerk: "Sakito" Exhibit P.

(Testimony of Frank D. Arthur.)

Q. By Mr. Adams: I show you now another chart, which is numbered 5143, which shows the area in the immediate vicinity of Los Angeles Harbor, in greater detail than the prior chart, and ask you, Captain Arthur, if you have checked the lines set out on that chart, in pencil, to [1043] determine whether the courses are as I have indicated.

A. I have checked them, and found them just as they are indicated here on the chart.

Q. Have you also checked the distances, as shown on the chart, and found them to be true?

A. Yes.

Q. There are two lines that start at a point about midway in the entranceway to Los Angeles Harbor, and come out in the form of two sides of a triangle. One of those lines is 353 true, and one is 329 degrees true; have you checked those two angles to see if they are correct?

A. I did, and found them correct.

Q. Those two angles are the same angles, are they not, as are shown in the prior chart, taken from a point midway Los Angeles Harbor, and running out to the 100-fathom curve, is that correct?

A. They are the same.

The Court: Does this show 340 degrees true over here?

Mr. Adams: No; this one.

The Court: What is this line?

Mr. Adams: That is the printed line.

The Witness: This is 340; this is 318, 10 degrees latitude.

Testimony of Frank D. Arthur.)

The Court: Is this the printed line?

A. That is printed.

The Court: That is 340 degrees true? [1044]

A. That is 340 degrees true; this is 340 degrees true. This is in the middle, 2 miles on each side.

The Court: In other words, there is a 2-mile area in there?

A. Yes; four miles, altogether.

Mr. Adams: I might point out to the court that there is already shown on these charts which have been printed after the collision, the position of the wreck, which has been brought out in the testimony as being in the position shown on these charts.

Mr. Cluff: I will stipulate that that also shows on 5101.

Mr. Adams: That is correct.

The Court: 5101, those were printed afterward?

Mr. Adams: They are later editions.

The Court: What is the mark 8-1/2?

A. 8-1/2 is the fathom depth. All these marks indicate the depth of water, in fathoms.

The Court: That shows over the wreck that is 8-1/2? A. Yes.

Mr. Adams: I might state to the court that I prepared these charts, as I have said, in connection with the suggestion of the court, and I don't want to burden the record, or take the time of the court, but if the court has any questions about the courses, or the area involved, I will be glad to let the court indicate to me what those questions [1045] are, and I will try to develop the information, or I will be glad to have the court do so.

(Testimony of Frank D. Arthur.)

The Court: This map helps me with some of the problems which have been bothering me, in my own mind, because it shows a leeway of four miles on 340 degrees true.

The Witness: In coming up from the south it is practically impossible for a ship to lay a course, and over a distance of that length, 360 miles, it is practically impossible that she will make that course true all the way up, without some change in current set, one way or the other. You will probably find yourself a mile or a mile and a half or two miles on one side, or a little bit on the other side.

Q. By the Court: How long do they continue on 340?

A. They keep checking it all the time.

The Court: How long do they continue the 340 true, so as to make the harbor?

A. If you made it true it would bring you right up on the breakwater; and you wouldn't have to make a change.

The Court: Where is the breakwater?

A. The breakwater entrance.

Q. By Mr. Adams: Isn't it true, Captain Arthur, that the middle course of 340 degrees true, as shown on this chart now before you, brings you right into the entrance way to Los Angeles Harbor?

A. That is it.

Q. When you are laying your course at 340 degrees true [1046] from San Benitos Island, as you mentioned, you extend your course to bring you right into the entranceway? A. That is right.

(Testimony of Frank D. Arthur.)

Q. By the Court: And if they maintained that course true they would not hit the "Olympic", either, would they? The wreck is a little to the left of the true mark.

Mr. Adams: It would show that the wreck is—well, I will get a pair of dividers and we will estimate that. I call the court's attention to the navigating chart of the "Sakito" which is in evidence as "Sakito's" Exhibit A.

The Court: I remember the navigating chart.

Mr. Adams: The line of 340 degrees true.

The Court: That was their theoretical line that they intended to follow, and then when they made up the different checks they found by drifts or other reasons they had varied from that and they took new bearings, where you show the differences.

Mr. Adams: Yes. And that line as plotted would bring the vessel right into the entrance way to Los Angeles Harbor.

Q. Will you check the line shown at 340 degrees true, which comes to a point midway between the two lights at the entrance way there, and see how far that is from the center of the mark for the wreck which we have mentioned?

A. 400 yards. The line is 400 yards to the east of the wreck. [1047]

Q. And the wreck would be 400 yards to the westward? A. That is right.

Q. If a vessel had been set over but was still heading 340 degrees true and she was over 400 yards—

(Testimony of Frank D. Arthur.)

The Court: Oh, I think that is apparent, counsel. If they got in front of that vessel and kept on going they would hit the vessel.

Mr. Adams: I was endeavoring to bring out that vessel—

The Court: The fact that they drifted over 400 yards one way or the other, if they kept on that way they would hit the vessel because it would be in front of them.

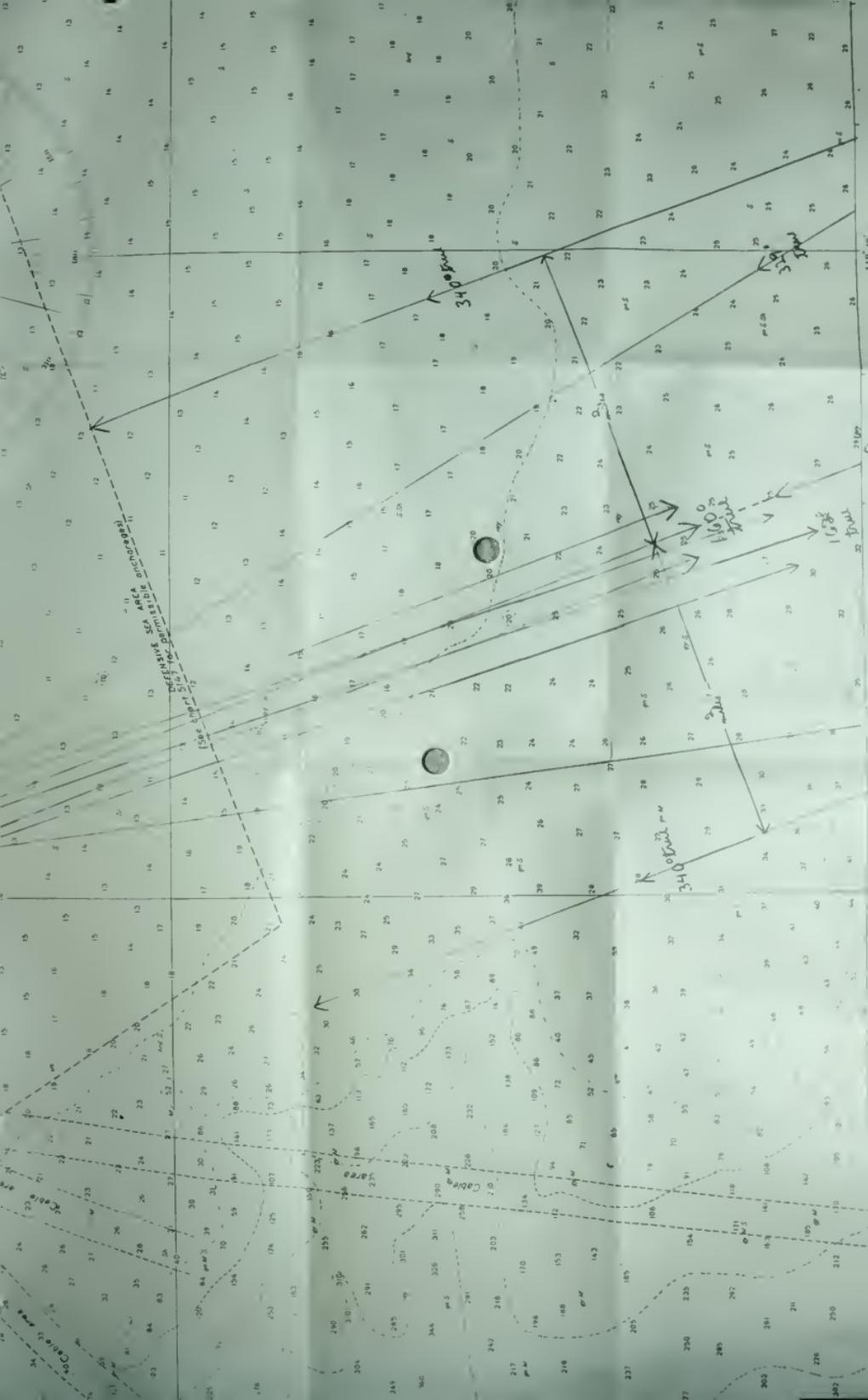
Mr. Adams: Yes. But I was going to bring out, if the court please, that such a vessel would not be off her course as that term has been sometimes used.

The Court: I think it has been explained here by this witness, and the Captain explained—and I don't suppose there is any dispute—that the vessel drifts one way or the other. Cross-examination of counsel indicated that is a recognized condition that they have to face.

Mr. Adams: I offer this chart numbered 5143 into evidence.

The Clerk: "Sakito" Exhibit Q.





(Testimony of Frank D. Arthur.)

Q. By Mr. Adams: I show you "Sakito" Exhibit O. Have you previously examined that, Captain Arthur?

A. Yes, sir; I have.

Q. Captain Arthur, assume that on the various dates [1048] shown on that exhibit the various vessels therein shown entered or departed from Los Angeles Harbor; assume also that those vessels entering Los Angeles Harbor were on voyages from the Canal or other ports in that general direction, or from San Diego, all bound for Los Angeles Harbor; with respect to the vessels shown on that list as having departed from Los Angeles Harbor assume that such vessels were southbound and destined for the Canal or ports in that general direction, or San Diego; assume further that a majority of such northbound vessels approached Los Angeles Harbor on a course of 340 degrees true; assume also that most of such southbound vessels leaving Los Angeles Harbor departed on a course of 160 degrees true or 162 degrees true; assume further that the barge "Olympic" was anchored within an area of about 100 yards from a point 3.3 miles off the lighthouse at San Pedro breakwater in the direction of 159½ degrees true; based upon your experience, assuming and taking into consideration such facts, have you an opinion as to whether or not it was good seamanship under such conditions to have anchored the barge in such position?

Mr. Cluff: Just a minute. To which we object

(Testimony of Frank D. Arthur.)

upon the ground it is not a proper subject of expert testimony and no proper foundation laid, the latter, primarily in that it does not show the nature of the ground and whether this area where the "Olympic" was anchored was a fishing bank. [1049] I want to direct the court's attention to Rule 26 of the International Rules in passing on my objection.

The Court: What is Rule 26?

Mr. Cluff: That is the rule that gives a fishing boat the right of position over a moving boat. We refer to it in the trial briefs. Article 26, I think, of the International Rules.

Mr. Adams: Are you assuming fishing vessel privilege for the "Olympic"?

Mr. Cluff: What is that?

Mr. Adams: Are you asserting a fishing vessel privilege for the "Olympic"?

Mr. Cluff: I certainly shall do so.

Mr. Adams: I am prepared to argue any point of law the court wishes to hear at this time.

The Court: I am going to overrule the objection. It is a question the court will finally have to pass upon and this court won't pay much attention to experts usurping the function of the court. But as long as counsel wants to ask it, I will permit it.

Mr. Adams: I consider that, if the court please, a proper subject of—

The Court: I didn't ask for any argument. Go ahead.

Mr. Adams: Will the reporter please read the question?

(Last part of question read by the reporter.)

(Testimony of Frank D. Arthur.)

A. I have a very definite opinion. [1050]

Q. What is your opinion, Captain Arthur?

A. My opinion is that it was not good seamanship to anchor her in that position with so many ships passing back and forth.

Q. Based upon your experience, and assuming and taking into consideration the same facts, have you an opinion as to whether or not such barge anchored in such position was in a dangerous place with respect to the safety of herself, the persons and property aboard and other vessels approaching and leaving Los Angeles Harbor in the manner described?

Mr. Cluff: Same objection.

The Court: Same ruling.

A. I have an opinion.

Q. By Mr. Adams: What is your opinion in that respect?

A. My opinion is the barge was anchored in a dangerous place.

Q. Based upon your experience, and assuming and taking into consideration the same facts, have you an opinion as to whether the barge anchored in such a position under such conditions was a menace to navigation with respect to other vessels approaching or leaving Los Angeles Harbor in the manner described?

Mr. Cluff: The same objection, and the additional objection that it calls for the conclusion of the witness.

(Testimony of Frank D. Arthur.)

The Court: Well, the same ruling.

A. I have an opinion. [1051]

Q. By Mr. Adams: What is your opinion, Captain Arthur?

A. My opinion is that the barge anchored there was a definite menace to navigation, safe navigation.

Q. Captain Arthur, in answering the questions which I will next put to you, please assume and consider the following facts: The barge "Olympic II" was built of iron in Belfast, Ireland, in 1877; she was originally a 3-masted sailing vessel, but in 1934 her masts were dismantled in part so as to give her the appearance shown in "Olympic's" Exhibits 1, 2 and 3, which I will ask you to please examine. I show you now "Olympic's" 1, which is a photograph of the "Olympic", and "Olympic's" 2, which is another photograph of the "Olympic", and "Olympic's" 3, which is a blueprint drawing or drawings of the "Olympic". With respect to "Olympic's" 3 you have already examined the photostatic copy of this blueprint, have you not, Captain Arthur?

A. I have.

Q. Now, please assume also the following facts: The barge was 258 feet long between perpendiculars and had a 38-feet beam; she was 22.8 feet deep; she had a gross tonnage of 1,776 tons and a net tonnage of 1,414 tons; her dead weight tonnage was 2500 to 3000 tons; 20 feet abaft her stem there was one water-tight bulkhead; this was the only water-tight bulkhead; from this bulkhead 20 feet abaft the

(Testimony of Frank D. Arthur.)

stem the lower hold of the "Olympic II" was open [1052] clear to the stern; there was carried in the lower hold, from a point even with the foremast, running to a point even with the after end of the tanks shown in "Olympic's" Exhibit No. 3, 1500 tons of ballast consisting of sand, gravel and cement blocks; at the time of the collision the draft of the "Olympic" was 16.6 feet aft and approximately 15 feet forward; the water tanks of the barge, as shown on "Olympic's" Exhibit No. 3, which had a capacity of about 97 tons, were about three-quarters full with fresh water; based on your experience, and assuming and taking into consideration such facts, have you an opinion as to the extent of the buoyancy of the "Olympic II" under those conditions if a hole were stove into her port side below the water line so as to permit the entry of sea water into the lower hold?

A. I have an opinion.

Mr. Cluff: Just a moment. To which we object on the grounds that, first, it does not show the size of the hole. I think that is sufficient to answer the whole question.

Mr. Adams: If the court please, the question does not call for any answer as to the size of the hole. Irrespective of the size of the hole, this witness can still testify as to what her buoyancy would be.

The Court: We know in this case what the extent of her buoyancy was. One minute and a half, I believe.

(Testimony of Frank D. Arthur.)

Mr. Adams: Well, I think the court is right on that. [1053]

The Court: I don't know where we need any expert testimony. We have the absolute evidence here. She went down in a hurry.

Mr. Adams: Well, if the court please, I have endeavored to supply the court with such expert testimony as I thought was material and might be helpful to the court.

The Court: Well, but as to the buoyancy, in the questions you asked if there was a pin-hole in there—

Mr. Adams: No. I asked "if there was a hole stove in her, how long she would remain afloat if the conditions were constant. That is what I asked him to assume, but not dependent upon the hole. I am asking what her buoyancy was after there was a hole punctured in her side below the water line.

Mr. Cluff: I will stipulate with you—

Mr. Adams: I am not asking that in terms of how many minutes she might remain afloat, but what was her buoyancy; what did she have to keep her afloat.

The Court: Answer the question, answer the question. It doesn't mean anything to me. It may mean something to a reviewing court. Go ahead and answer, and don't argue.

A. I have a definite opinion.

Q. By Mr. Adams: What is your opinion, Captain Arthur? [1054]

A. My opinion is that if there is a hole stove in

(Testimony of Frank D. Arthur.)

the side large enough to allow water to flow in there, that when that whole after hold gets water flowing into it she will sink before it gets full. One water-tight compartment forward 20 feet, or whatever it is, is not enough to keep her afloat.

Q. By the Court: How many would it take to keep her afloat?

Mr. Cluff: I object to the court's question on the ground the witness has not shown any qualifications.

The Court: Well, I want to find out.

A. Well, if she had a bulkhead in the middle and the front end was punctured her after end would still stay afloat.

Q. That would depend somewhat on the size of the hole, wouldn't it? These boats going back and forth to Europe, they are sinking right along and they have plenty of bulkheads in them, haven't they? A. Yes.

Q. And they are sinking right now before the crews can get off the boats? A. Yes.

Q. The bulkheads don't hold them up, do they?

A. No; the bulkheads don't.

Q. That depends somewhat on the size of the hole, doesn't it? [1055]

A. Depends on the size and somewhat on the location.

Q. Where is the most dangerous place?

A. Across the engine room.

Q. That is because of the blowout. Suppose there isn't any engine; suppose a boat like this, no

(Testimony of Frank D. Arthur.)

power there so there is no danger of blowout, wouldn't the amidship be the most dangerous place that you could cave in that ship?

A. Yes; that would weaken her more than a hole at either end.

Q. And if there was a bulkhead in the midship and she was struck amidship, that bulkhead would have been knocked out, wouldn't it?

A. Then there wouldn't be any bulkhead, but if you had two bulkheads——

Q. How many bulkheads would be required, would you think, to maintain a proper buoyancy of a vessel 258 feet long, two bulkheads?

A. My personal opinion is that two bulkheads would; but I think the bureau of local inspectors have handed down a ruling on that, that there must be a certain number of bulkheads according to size and class of the ship.

Q. They generally have two. If there were three of them, there would be one at each end and one in the center, wouldn't there?

A. That is right.

Q. If it was struck amidship the center one would be [1056] knocked out, and if the hole was big enough, the ones at each end would not amount to much, would they?

A. Well, it all depends on how close to the end they were. In a case like this, if anyone was to ask me and I was to put bulkheads in, she is 250 feet long, 258 feet, I would put one about 100 feet from the bow and 100 feet from the stern, then I think either one of those compartments would keep the

(Testimony of Frank D. Arthur.)

buoyancy, and filled with water, she wouldn't sink.

Q. I know, but one of the bulkheads—

A. One of the bulkheads, I still think one end of the vessel would float on the water. It would take her much longer to sink, at any rate.

Q. In other words, you could cut her half in two and she would still float?

A. That is possible. That has been done.

Q. Why don't you pass that on to the vessels that are going to Europe so that some of the boys would be saved?

A. There have been ships going to Europe broken in half and they have taken both halves of them and put them together.

The Court: That is all.

Q. By Mr. Adams: Captain, based upon your experience, and assuming and taking into consideration the same facts that I have outlined to you, have you an opinion as to whether or not the barge under such conditions was seaworthy [1057] with respect to the safety of herself and persons and property aboard?

Mr. Cluff: The same objection.

The Court: Same ruling.

A. In my personal opinion, she was not seaworthy.

Q. By Mr. Adams: Please assume and take into consideration, in addition to the facts I have mentioned, the further facts that a hole was stove in the port side of the "Olympic II" just forward of her main mast by the stem of the "Sakito Maru".

(Testimony of Frank D. Arthur.)

and that the stem of the "Sakito Maru" penetrated into the port side of the barge to a point about even with the keel line of the "Olympic II"; and that such hole stove in the hull of the port side of the "Olympic II" at about 16 feet in width, extending from the deck of the barge to a point approximately 7 or 8 feet below the water line; based upon your experience, and assuming and taking into consideration such facts, have you an opinion as to the buoyancy of the "Olympic II" under such conditions with such a hole stove in her port side in such a manner?

Mr. Cluff: Just a moment. Two objections there. First, the previous objection I urged; second, assuming facts not in evidence, that the hole only ran to 7 or 8 feet below the water line.

Mr. Adams: If the court please, this evidence at this stage of the game shows that by the markings on the "Sakito's" drawings of the damage. [1058]

Mr. Cluff: The "Sakito" had 24 feet draft forward, the "Olympic" was 16 feet.

Mr. Adams: The water line was just the same.

The Court: Go ahead, gentlemen. It is not worth arguing about it. It is easier to listen to it than to argue about it. We know to what extent this boat was buoyant. She went down right now. And we know it, everybody saw it and everybody knows it that had anything to do with it; and if opinion evidence is going to strengthen the facts any, why, go ahead.

Mr. Adams: Will you read the last portion of

(Testimony of Frank D. Arthur.)

the question, Mr. Reporter, please, beginning with "based upon your experience"?

(Question read by the reporter as requested.)

A. I have a definite opinion.

Q. What is your opinion?

A. That the buoyancy would be practically none at all.

Q. Captain Arthur; based upon your experience, and assuming and taking into consideration the same facts, have you an opinion as to whether or not the buoyancy of the barge would be increased had there been additional watertight bulkheads?

Mr. Cluff: Same objection.

The Court: Same ruling.

A. Yes. The buoyancy of the vessel would be improved with additional water-tight bulkheads. [1059]

Q. By Mr. Adams: You have testified that under the conditions outlined to you that it was not good seamanship to anchor the "Olympic II" in the position in which she was anchored. Does the lack of buoyancy of the "Olympic II", which you have also testified to, change your opinion in any respect with regard to whether or not it was good seamanship to anchor the barge in that position?

A. It does not change my position. It makes my opinion, after knowing the buoyancy, or lack of buoyancy, I would say it was still more dangerous to have her anchored at the position where she was in the steamer lane.

Mr. Adams: You may cross-examine.

(Testimony of Frank D. Arthur.)

Cross-Examination

Q. By Mr. Cluff: Have you made any study of the standards of either the inspectors or of the classification societies, Lloyd's, American Bureau, Bureau of Veritas, Danish Lloyd's, or any other with respect to the number of bulkheads required in a sailing vessel?

A. No; I have made no definite study of it.

Q. Do you know and can you refer us to any rule of the inspectors that requires more than one bulkhead forward in a sailing vessel?

Mr. Adams: If the court please, just a minute. That is incompetent, irrelevant and immaterial.

The Court: Overruled. You have put this man up as an [1060] expert.

Mr. Adams: That is not a sailing vessel.

The Court: Wait a minute, now. I have ruled. You have placed this man up as an expert and he is now subject to cross-examination to see what he knows.

Q. By Mr. Cluff: Have you ever had any experience with a vessel in collision that has been rammed in the side? A. No, sir.

Q. Have you had any experience with a vessel in any collision?

A. I have never been on one that was in a collision. I was always too lucky.

Q. So we can certainly congratulate you, Captain, then, you have an excellent record. So your knowledge on which your testimony here is based is not based on any particular experience of your own whatsoever, either in sail or in steam?

(Testimony of Frank D. Arthur.)

A. With practical experience as a master mariner.

Q. You haven't experienced any collisions?

A. No.

Q. Captain, if you got any such penetration with a heavy steamer, as indicated in the hypothetical questions just asked you, that is, through a vessel with a 38-foot beam, at least on her keel, about 16 feet wide, it would be bound to have a great deal of distortion of all the strength structures, wouldn't it, both forward and aft? [1061]

A. To a certain extent.

Q. That is, the iron decks and stringers would probably buckle and be distorted? A. Yes.

Q. The deck beams would be crushed out of shape and bent, or torn loose from their fastenings, is that right?

A. In the immediate vicinity of the hole.

Q. And also forward and aft for a considerable distance?

A. Yes. It depends upon how the collision occurred whether it would be enough to break any other bulkheads or not.

Q. Suppose you add to the facts that have been given to you, and assume that while that ship was in contact, the big vessel, 500 feet long, took a swing on that fulerum of 30 degrees, you would have that bow digging back and forth in the structure, wouldn't you?

A. It would be twisting sideways.

Q. Do you think any bulkhead that was ever put into a ship would survive that experience?

(Testimony of Frank D. Arthur.)

A. Yes, I do.

Q. Captain, you have been running in and out of port here on your intercoastal runs for a number of years? A. Yes, I have.

Q. By the way, have you a pilot's license for Los Angeles? A. No, sir. [1062]

Q. You have come in, I take it, in all sorts of weathers? A. That is right.

Q. In fog as well as in sunshine, in daytime as well as at night? A. Yes.

Q. When you say that the course is 340 true from Benitos Islands, that depends very largely on your landfall there, doesn't it?

A. Do you mean on—

Q. On your starting point, on your fixed beam?

A. That is right.

Q. If you have a fix of 10 degrees, that may be 340 true, 10 miles out, outside it would be 340 degrees true, and if you came inside of Cedras, the course would be several degrees different?

A. Yes.

Q. It would be around about 325 degrees?

A. Yes.

Q. By that same token, if your landfall was 20 or 25 miles, your course would be more than 340?

A. Yes.

Q. Even if you steered a course 340, assuming that course to be absolute, where you would get your landfall off the breakwater would depend entirely upon your starting point, wouldn't it? [1063]

A. Yes.

(Testimony of Frank D. Arthur.)

Q. That is a theoretical matter? A. Yes.

Q. Under the charts which Mr. Adams has drawn, and very nice, too, I may say, you have used a beam about 4 miles wide as showing the theoretical limits of the course of 340 true. Why did you limit that to 4 miles, Captain Arthur, or did you limit it? A. I didn't.

Mr. Adams: I did the limiting, upon a statement that the court directed to both of us, in which you volunteered the information that the court might consider that the vessels would be navigating in an area of 3 or 4 miles.

Mr. Cluff: Yes, I made such a statement.

Q. As a matter of fact, if you did not get a pretty good fix, and several checks on the way up, with the drift or set, it might be a great deal more than that?

A. It might be; might be as much as 5 miles, or even more.

Q. As a matter of fact vessels have been known to pile up on the beach in a fog, on Seal Beach?

A. That is correct.

Q. In your experience in intercoastal runs did you make San Diego a port of call?

A. No, I came right up.

Q. According to your practice, which side of Cedras [1064] Island did you take, the inside or outside? A. The outside.

Q. Did you get your landfall on the Benitos for your final shoot for setting for a course for San Pedro? A. That is right.

(Testimony of Frank D. Arthur.)

Q. The course is generally 340 true?

A. That is right.

Q. That would carry you, if made good, just as far as the breakwater entrance? A. Yes.

Q. Do you adopt any different practices, Captain, in fog?

A. No. Do you mean if it is foggy between Benitos—

Q. No, I mean, as you approach Los Angeles, let us say, after you get the Catalina Island lights abeam, suppose you get into fog, within the next hour before you made a landfall, when you ran into that fog, would you, as a matter of seamanship, continue to bull right ahead on a theoretical heading of 340 true, or change your course?

A. It depends on the circumstances. If I felt she made the course, that it had been made good on there, I would feel my way along toward the harbor entrance.

Q. With that situation would you still hold on your theoretical course of 340 true?

A. Yes; I would checkup as I went along, as well as I could, with soundings, to see that I didn't get onto the [1065] beach.

Q. As soon as you got soundings, you would check the dead reckoning with the soundings?

A. Yes.

Q. And you would follow the directions of the Coast Pilot in foggy weather, would you—would you follow those directions, Captain, or not?

(Testimony of Frank D. Arthur.)

A. Just what directions?

Q. I am reading from page 28 of the Coast Pilot, edition of 1934. You are familiar with the standard course laid down for coastwide navigation? I am calling your attention to just a part of course 323.2, of the passage between Point Loma and Los Angeles Harbor. Are you familiar with that?

A. Yes. That is 3 2/8ths miles off, coming up from San Diego. You don't run it coming from Benitos Island.

Q. I realize that. I am reading from page 28: "If uncertain of the position in approaching San Pedro Bay, steer so as to make sure of being to the eastward of the Point Firmin Breakwater. Continue to a depth of 10 fathoms, and then haul to the westward in that depth, and the fog signal will be made without difficulty." That is a good direction, isn't it?

A. Yes, it seems all right.

Q. If you were bringing your ship in about 4 or 5 miles off the breakwater, off the harbor, and you encountered fog, which [1066] cut your visibility down to 300 meters, or about 1,000 feet, it would be pretty good seamanship to at once bear off to the eastward until you picked up the 10 fathom curve, wouldn't it?

A. If I was within 3 or 4 miles of the breakwater, and knew I was there, I wouldn't have to go and look for the 10 fathom curve.

Q. I am assuming you were within 4 or 5 miles

(Testimony of Frank D. Arthur.)

of the breakwater, on dead reckoning, and if you did not know whether you had made the course 340 true good or not?

Mr. Adams: I think the question is unfair in that it doesn't inform the witness of the last position of fix. If the fix had been obtained an hour before, the circumstances might have been entirely different. [1067]

Q. By Mr. Cluff: Let us assume that the fix had been obtained an hour before, off the Catalina Island, established from a point with the south point light abeam, and that you had proceeded in clear weather until 7 o'clock, at which time fog was seen ahead of you, and at 7:03 you are in fog so that you slowed down, and you started your whistles as you proceeded, and as you proceeded on a course of 340 true the fog was thickening very rapidly, so that three or four minutes later the visibility was down to about 1000 feet; you had had no soundings or no sights since your fix an hour before;—now, would you say it was good seamanship to go right ahead, or follow the directions of the Coast Pilot, and work over to the eastward until you struck your 10-fathom curve?

Mr. Adams: I object to that as assuming facts not in evidence, incompetent, irrelevant and immaterial, and beyond the scope of the direct examination.

The Court: Objection overruled.

A. In that case, if I had a fix an hour before,

(Testimony of Frank D. Arthur.)

I would just keep feeling my way on up to the break-water.

The Court: What do you mean by feeling your way?

A. Go slow, or stop and listen, and keep on going a little more, feeling as I went along.

Q. How fast do you travel when you say you feel your way?

A. Two or three knots an hour at the most, maybe stopped [1068] most of the time.

Q. In other words, it is dangerous to proceed under those circumstances?

A. That's right. You must keep your ship under control at all times.

Q. Would you say that six knots an hour would be pretty fast under those circumstances?

A. I would, yes.

Mr. Adams: I don't think the witness, again, has been informed of the full circumstances, with due respect to the court's question, and I object to it upon the ground that there is no proper foundation laid for that question, and that it calls for the conclusion of the witness.

The Court: You have put an expert on here, and the court wants the benefit of his expert knowledge, the same as the defendant.

Mr. Adams: I am frank to say that was why I called an expert, because I wanted the court to have the benefit of a practical navigator.

The Court: I will give you an opportunity to

(Testimony of Frank D. Arthur.)

examine him, and go into any additional suppositions you want.

Q. By Mr. Cluff: Captain, I take it, in the course of your coastwise experience, you are pretty much familiar with the fishing grounds, and places where fishing vessels habitually either anchor and fish, or drift and fish, up and down the coast between San Francisco and—— [1069]

The Court: We are only interested in this one place.

Mr. Cluff: Let us say between Catalina Island and Los Angeles. A. Yes.

Q. You have noticed, of course, out in the area which has been chartered, that is, about where the wreck of the "Olympic" is now marked on the chart, you have noticed for many years that that is a very populous fishing ground practically all the year around? A. Yes.

Mr. Adams: I object to that upon the ground that it assumes facts not in evidence.

The Court: He is asking him if he knows.

Q. The answer is yes?

A. I know there are always fishing boats in that vicinity.

Q. By the Court: How long have you known that?

A. Since I have been running out there, since 1930.

Q. There have always been barges out there all that time, haven't there? A. Yes; I think so.

(Testimony of Frank D. Arthur.)

Q. By Mr. Cluff: You have known several barges to be in and about that same area for several years? A. That's right.

The Court: Have you always considered those barges dangerous to navigation?

A. Yes, sir; I have considered them a general nuisance. [1070]

Q. By Mr. Cluff: That's just the point, you navigators who are engaged in navigating vessels, consider a fishing boat a nuisance?

A. No; it all depends upon where the fishing boat is.

Q. If they go out and lay somewhere in your course, you have to keep awake, and go around them?

A. Then they are a nuisance.

Q. Another nuisance is that the law makes you go around it, too, isn't it?

The Court: That is argumentative.

A. I don't know whether there is a law that covers fishing boats anchored out to sea.

Q. Mr. Cluff: I won't argue the law with you.

The Court: It is good seamanship to go around it?

A. They are not permitted to enter any channel. There is no well-defined channel there, and inside inland waters they are not permitted.

Q. By Mr. Cluff: Where the "Olympic" was, there was 10 miles of water on each side of her, wasn't there? A. Yes.

Mr. Adams: That is obvious. I am not arguing about the open sea.

(Testimony of Frank D. Arthur.)

Q. By Mr. Cluff: Any navigator then, whether they are a nuisance or not, every navigator on the coast must expect, any time he is within sounding there, that probably there will be fishing vessels in his course? [1071]

A. You expect them almost any place.

Q. Of course, a fishing vessel only fishes off sounds; you don't find them out trolling for sardines in the deep ocean?

A. Yes; they fish tuna 3000 miles out in the Pacific, with no bottom.

Mr. Cluff: We will except tuna.

The Court: It has been more or less of a notorious fact among the navigators, that have occasion to use San Pedro Harbor, that these fishing barges are present there, hasn't it? A. Yes.

Mr. Adams: If the court please, with due respect to the court, I object to the question upon the ground that no proper foundation has been laid, and that it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Adams: And I move that the answer be stricken for the same reason.

The Court: Same ruling; denied.

Mr. Cluff: Has the court finished?

The Court: I think that is all. Proceed.

Q. By Mr. Cluff: Captain, just one other question. When you are running on soundings, within a few miles of the harbor, in addition to the possibil-

(Testimony of Frank D. Arthur.)

ity of fishing vessels, there is also the possibility, if it is foggy, [1072] that some prudent or cautious navigator has anchored his vessel until the weather clears, and you have got to look out for that, too?

A. That's right.

Q. The closer you get to the harbor, the more that hazard increases? A. Yes.

Q. Would you call approaching in fog, where you could not see much more than a ship's length and a half, or two ship's lengths ahead, with the visibility getting less all the time—would you think it was good seamanship to approach the harbor at six and a half knots an hour, without having your mate and the carpenter on the forecastle head and ready to drop anchor at a few moments' notice, if anything came in front of you?

Mr. Adams: I object upon the ground that no foundation has been laid, and that it calls for a conclusion of the witness.

The Court: The same ruling. You laid the foundation yourself.

Mr. Adams: This question does not even inform the witness as to what type vessel he is on, or what the reverse speed is.

The Court: The witness has been qualified. You tried to get by, without defining the size of the hole in the vessel. [1073]

Mr. Adams: I don't think that situation is analogous.

A. What is the question?

(Question read by the reporter.)

(Testimony of Frank D. Arthur.)

A. I wouldn't exactly consider it necessary to have the mate and the carpenter standing by unless I was going to anchor. I wouldn't anchor until I arrived at a safe anchorage.

Q. And you wouldn't run, Captain, unless you could stop well within your visibility?

The Court: That question has been asked and answered, counsel.

Mr. Cluff: Very well. I have no further questions.

Redirect Examination

Q. By Mr. Adams: Captain Arthur, when you made mention of the fact that if you were proceeding in fog approaching Los Angeles Harbor, you would feel your way along, did you mean that as you approached Los Angeles Harbor in fog and had no aids to navigation visible, that you would feel your way along, trying to pick up the diaphone?

A. That's right.

Q. After you picked up the diaphone, what would dictate your action from that point on?

A. If it stayed thick, I would get up under the lee of the breakwater, southeast of the entrance, and anchor. That would be out of the way of shipping, and I would stay [1074] there until it cleared up, enough to go in.

Q. When you spoke of the speed at which you would travel under certain circumstances that you were asked about, did you have reference to the speed that you traveled aboard your ship?

(Testimony of Frank D. Arthur.)

A. That's right.

Q. You have never been aboard the "Sakito Maru", have you? A. No, sir.

The Court: How large are you referring to?

A. 10,000-ton ship, the average speed,—they are old ships—is 10 or 15 knots, the best speed.

The Court: How long are they?

A. 450 feet.

Q. By Mr. Adams: You are not acquainted with the engines in the "Sakito Maru"?

A. No, sir.

Q. Nor her reversing power?

A. No; I know nothing about her whatsoever.

Q. You stated that you became acquainted with the fact that there were barges anchored in the vicinity in which the "Olympic" was anchored, is that correct? A. Yes.

Q. That is, while you were on the intercoastal run? A. Yes, sir.

Q. Even after you knew that those barges were located there, did you have an experience in fog which, the [1075] parlance of the street, amounted to a close shave, in reference to those barges?

A. I did.

Q. Will you explain what happened?

Mr. Cluff: To which we object upon the ground that it is incompetent, irrelevant and immaterial.

Mr. Adams: There has been a lot gone into—

Mr. Cluff: You called me for reminiscing the other day, and we can go into stuff for the last 20

(Testimony of Frank D. Arthur.)

years, which I do not believe would enlighten the court.

The Court: We are not trying this navigator; we are not trying him.

Mr. Adams: No, but, if the court please, the statement is made that if they see these barges there, they can go around them, and it overlooks the fact that if you are traveling in fog you can't see the barges. I am endeavoring to demonstrate, that here is a man who became acquainted with the fact that the barges were there, and when he was in fog, and couldn't see them, he had a close shave.

The Court: That is probably why he has given the testimony that he has given, that he creeps in, and feels his way. I am going to sustain the objection. I don't feel that because he came close to an accident, at some time or other, that it either adds or detracts from this case.

Mr. Adams: May I, for the purpose of the record, state what I intend to prove? [1076]

The Court: You made the statement.

Mr. Adams: May I state my offer in substance is along the line that I stated?

The Court: Yes.

Q. By Mr. Adams: Do you remember when it was, Captain Arthur, that you first came to Los Angeles Harbor on the intercoastal run?

A. In 1930.

Q. Did you know before you arrived in Los Angeles Harbor on that occasion that there were barges anchored in this Horseshoe Kelp area?

(Testimony of Frank D. Arthur.)

A. No, sir, I did not.

Q. How did you learn?

The Court: Did you learn it on the first occasion?

A. I saw them the first time I came here.

Q. By Mr. Adams: You saw them on that occasion? A. Yes.

Q. Then you continued to make runs at more or less regular intervals, as I understand it?

A. That's right.

Q. As you came and left Los Angeles Harbor on these subsequent trips, you continued to see barges in the same location? A. Yes.

Q. Is that what led you to know that these barges were there more or less permanently? [1077]

A. That's right.

Q. Did you find that there were certain seasons of the year they were there, and certain seasons when they were not there?

A. I never took notice of it. I just took it for granted that they were there.

Q. After you learned that the barges were in that location, Captain, as you approached Los Angeles on these various vessels, did you pass those barges on only one side in particular, or might you not, on different occasions, pass on one side, and on another occasion the other side?

A. I might pass on either side.

Q. What would be the situation with respect to leaving Los Angeles Harbor to passing these barges?

(Testimony of Frank D. Arthur.)

A. We could do the same, pass on either side, but I would customarily pass outside of them.

Q. That would be to the westward?

A. Yes.

Mr. Adams: No further questions.

Recross-Examination

Q. By Mr. Cluff: You said in foggy weather, where it was very thick, as you approached the breakwater, you would lie in the lee of the breakwater. Did you mean the west breakwater, or the new breakwater in Long Beach?

A. Yes; where the new breakwater is now; I would lie [1078] southeast of the entrance.

Q. So, if your theoretical approach was some place to the west of the entrance, you wouldn't lie there then in the path of anything coming in from Point Firmin?

A. That's right; I would get out of the road.

Q. Which would be to the eastward so that you would get out of the way of anything?

A. Yes.

Mr. Cluff: That is all.

(Short recess.)

Mr. Adams: May it please the court, I would like to explain one feature in connection with the comment the court has made during the course of the trial with respect to the divers who went down and examined the wreck after the "Olympic" sank.

The Court: I did not make any comment relative to that.

Mr. Adams: Yes; as I recall, the court stated that he thought the divers, if brought into court, could testify as to the hole made in the side of the "Olympic".

The Court: If they had ascertained that, I did not know.

Mr. Adams: In any event, we interviewed the diver, and found that instead of only one, there were three, and we found that two of them did not know anything about it; that they were working on the bow anchor and the stern anchor, and we had thought there was a diver's report, and [1079] we thought that it would be introduced as a part of the libelants' case. The third diver, we found, said that he knew something about it, and Mr. Cluff and I have discussed the matter, and I think probably maybe the two of us can interview that diver together, and perhaps prepare a statement that we are both satisfied with, and offer it as a part of the record in the case; so if the court would care to receive that testimony——

The Court: The only thing is, as I have commented before, it seems to me that it is material in this case to show the size of that hole in the side of that vessel. I think it not only goes to the question of whether or not, if the "Olympic" had complied with the regulations of the Department of Commerce, whether or not the buoyancy of that boat would have been sufficient to have given the people an opportunity to get off of it, but I am frank to say

that it seems inconceivable to me that a boat going a knot or a knot and a half an hour could cut into this iron ship, and do the damage the "Sakito Maru" did. How that could happen, going at that speed, is just beyond me. I am telling you frankly how I am thinking, and for that reason I think that the size of that hole, and the nature of it, has some material value.

Mr. Cluff: I join in Mr. Adams' suggestion.

The Court: Of course, on the other hand, we have the testimony of the Captain, and I presume the libelant is [1080] going to have a surveyor's report here, that will give us the same information, because the diver undoubtedly could not go all over that hole, to see the size of it.

Mr. Cluff: We have been trying to get hold of this diver, your Honor. It is my understanding that the water was so muddy that the divers couldn't report anything.

Mr. Adams: This diver I have reference to was sent down to dynamite the masts, and to break up the wreck, and in doing that work he was required to work on the deck of the wreck, and he stated, in working around the masts, which, of course, are located in the center of the ship, it is his recollection that the hole stove in the port side did not extend to the center line of the ship.

Mr. Cluff: That would knock the mast right out of her.

Mr. Adams: I am not arguing the case.

Mr. Cluff: Let us go down tonight, and we will get a stenographer, and get a statement from him. I understand from Mr. Adams this man is working on a diving job, where if he quits, then the whole crew will be thrown out of work. I will go down with him, and get a statement or a deposition or something.

Mr. Adams: I would just as soon do it, but I don't know that it has to be done tonight, unless the court so desires.

The Court: Gentlemen, I am anxious to get the evidence in, and I am anxious to get the briefs in. There are a [1081] lot of people that are directly interested in this litigation, and I think it should be cleared up as expeditiously as possible.

Mr. Adams: We rest our case in chief, if the court please, right now.

Mr. Cluff: Shall we go down and see the diver tonight, Mr. Adams?

Mr. Adams: I don't know that it is necessary that we should go tonight.

The Court: I don't think it makes any difference whether you go today or tomorrow.

Mr. Cluff: Let us say some time this week?

Mr. Adams: Yes.

Mr. Cluff: I have a couple of stipulations. I understand, Mr. Adams, that it will be stipulated that if the person in charge of the records at the pilot station near the breakwater were called as a witness, he would testify that the records of the pilot

station show the following: That on July 16, 1940, the "Sakito Maru" passed the breakwater light southbound at 6:57 p. m.; the visibility was good, with a clear sky, and northwest wind. The weather observations, which were taken periodically at the pilot house, were as of 5 o'clock p. m. Sunset occurred at 7:05.

Mr. Adams: So stipulated.

Mr. Cluff: Also that the witness would testify that the records of the pilot station show that on April 19th, [1082] the "Sakito" passed in north-bound from the Canal, at the breakwater light at 11:30 a. m.; sky overcast, visibility good; west wind.

Mr. Adams: And the observation at 5 a. m. to the effect that the visibility was poor, with light fog, overcast sky, wind north.

Mr. Cluff: I will stipulate that the record so shows, subject to materiality. Mr. Adams, I want to invite one other stipulation, which I haven't discussed with you: [1083] That is, that Mr. Judd, who is the owner of both the "Point Loma" and the "Rainbow", that if called as a witness, would testify from his records that the "Rainbow", that is, the "Samar", was anchored on the banks on March 16, 1940, and the "Point Loma" on or about April 6, 1940. He fixes both of those dates, because those dates represent the first receipts that came in from the passengers on the barge. Mr. Judd verifies that from his records. I invite a stipulation from you that if called he would so testify.

Mr. Adams: Will you stipulate that Mr. Judd, if called, would testify that the fog was definitely in layers?

Mr. Cluff: If you are going into that, I can't, and I withdraw my request.

Mr. Adams: I have certain facts that Mr. Judd would testify to which I would like to get into the record.

Mr. Cluff: I would not call him as a fact witness, because I thought we had enough, but if you are going into all he testified to before the A Board, let us get him here.

Mr. Adams: I rested my case in chief.

Mr. Cluff: Do you decline to stipulate?

Mr. Adams: Yes, unless you want to include other matter which I consider material.

Mr. Cluff: I would like to offer formally in evidence page 28 of the Coast Pilot, as I read to the reporter there, in the examination of Mr. Arthur.

Mr. Adams: If the court please, I don't think it is [1084] necessary to make that part of the record. I think the court can refer to a document like that, and if there is any materiality at all, it is a matter counsel would raise in the argument.

Mr. Cluff: I make the offer.

Mr. Adams: I object to that particular portion.

The Court: What is the objection?

Mr. Adams: I object upon the ground that it is incompetent, irrelevant and immaterial.

The Court: I don't know whether it is material or not. I will receive it, subject to a motion to strike; if you have any citations where it is not material, a motion to strike will be entertained.

Mr. Adams: I move at this time to strike it upon the ground that the respondent is not charged with knowledge of anything that is contained within the covers of that book, and if it is not charged with knowledge, what materiality can it have?

The Court: The motion will be submitted, which is the same position we were in before.

Mr. Cluff: I would like to offer a Certificate of Inspection of the "Olympic II" for 1938. That is on the issue of general seaworthiness, and I want to simply show that she passed inspection in 1938, and there is testimony that her structure was not changed since that time.

Mr. Adams: I won't offer an objection to the use of [1085] the certificate, as a copy, or anything along that line, but I do object upon the ground that it is incompetent, irrelevant and immaterial, being too remote in time to show anything concerning her condition at the time of the collision, and, furthermore, that the certificate itself is no proof of seaworthiness.

Mr. Cluff: There has been a great deal of talk about it.

The Court: I will admit it for what it is worth.

The Clerk: Exhibit No. 15.

EXHIBIT 15.

Form 856

[May 1937]

File No. V4472

This Certificate Expires April 4, 1939

UNITED STATES OF AMERICA

Department of Commerce

Bureau of Marine Inspection and Navigation

CERTIFICATE OF INSPECTION

For Seagoing Barges of 100 Gross Tons or Over

(Authority: Act of Congress approved May 28, 1908)

State of California

District of Los Angeles

Name of Barge Olympic II

The undersigned, Inspectors for this District, Do Certify that, in accordance with the provisions of an act of Congress approved May 28, 1908, and the Rules and Regulations of the Board of Supervising Inspectors, on the fourth day of April, 1938 at Los Angeles, in the State of California, they completed the inspection of the seagoing barge named Olympic II, of 1,766 gross tons; home port San Franciseo, in the State of California; hull constructed of iron: whereof Hermosa Amusement Corporation is owner, and J. M. Andersen is master: that said vessel is of a structure suitable for the service in which she is to be employed and is equipped with one donkey or

auxiliary boilers built of tested material in the year (no record), has suitable accommodations for the crew, is in a condition to warrant the belief that she may be used in navigation with safety to life, and is permitted to navigate the waters of Pacific Ocean, Coastwise, between San Diego and Santa Barbara with no passengers on board for 1 year from the date of said inspection.

Included in the entire crew there must be 2 certificate lifeboat men.

Officers and Crew Required

Being (illegible)	
Master	1
Mate	2
Cert. able seamen	2
Steward's & other dept. when needed	4
	—
Total	9

Life-Saving Equipment Required

Metal lifeboats	—
Wooden lifeboats	1
Collapsible lifeboats	—
Life preservers for officers and crew	
(adult)	308
Children's	30

Additional Equipment Required

Anchors	3
Anchor cables	2

Boilers

Diameter No Record

Length ----- —

Shell thickness ----- —

Hydrostatic test, lb----- 120

Max. allowable pressure, lb----- 80

When at anchor is allowed to have 300 passengers on board, and is required to carry 1 licensed master, 2 certificated able seamen, 1 watchman, and when needed 4 persons in the Steward's department.

JOSEPH J. MEANY

Inspector of Hulls.

JOSEPH A. MOODY

Inspector of Boilers.

State of California

Port of Los Angeles—ss.

Subscribed and sworn to before me this 8th day of April, 1938 by Joseph J. Meany, Inspector of Hulls, and by Joseph A. Moody Inspector of Boilers.

CARL O. METCALF

Deputy Collector of Customs.

Office of U. S. Local Inspectors

District of (Port) Los Angeles, Calif., April 8, 1938

We Hereby Certify that the above certificate is a true copy of the original issued by this office to the vessel named herein.

JOSEPH J. MEANY

Inspector of Hulls.

JOSEPH A. MOODY

Inspector of Boilers.

The original Certificate must be framed under glass and posted in a conspicuous place in the vessel

11—2824

Mr. Cluff: I find myself chagrined that I am running out of witnesses. I had three which I was counting on tomorrow; one is a coast guard officer, and his ship is in drydock, and he could not be here. I have one witness I can put on. [1086]

ALBERT C. WILVER

called as a witness on behalf of the libelants in rebuttal, being first duly sworn, testified as follows:

The Clerk: You will state your name.

A. Albert C. Wilver.

Direct Examination

Q. By Mr. Cluff: Captain Wilver, will you tell the court your experience quite briefly, as a ship's officer?

A. I started to go to sea as an apprentice, and served my apprenticeship in sailing vessels. Upon the completion of serving my apprenticeship, I became an officer in sailing vessels, and subsequently commanded sailing vessels, and subsequently commanded steamers; and during the last war I did a tour of duty in the Navy. I entered as ensign, and came out as a lieutenant commander; and dur-

(Testimony of Albert C. Wilver.)

ing which time I commanded transports, and one school ship, one gunboat, and some troop transports. I went back to my old love, sailing ships, after the completion of the war, and sailed them, and at that time I owned several sailing vessels. Since about 1925 I came ashore in the capacity as a marine surveyor, working mainly for insurance companies, and one time I was a member of a firm, a partnership, which represented the classification society.

Q. That was the "Navigation Bureau of Veritas"? A. Yes. [1087]

Q. A member of Lloyd's? A. Yes.

Q. Captain, have you also, in the course of your experience, been engaged in the business of salvaging vessels? A. Yes.

Q. You were at one time working for Merritt, Chapman & Scott, the well-known salvage firm?

A. Yes, sir.

Q. In your private practice, you have been, for a number of years, and are now, engaged more or less constantly in being the doctor and undertaker of vessels that have been in difficulty?

A. Yes. I might mention that I was president of the Pacific Towboat Company here, engaged solely in salvaging and towing.

Q. You at one time, I believe, were second mate of the "Star of Italy"? A. Yes.

Q. Which is a sister ship to the "Olympic" which we are talking about here?

A. Exactly the same ship.

(Testimony of Albert C. Wilver.)

Q. Built in the same molds?

A. Exactly alike.

Q. Of the same dimensions?

A. Yes. [1088]

Q. Captain, you have sailed in a great many sailing vessels as seaman, officer and master?

A. Any number of them.

Q. As to bulkheads in sailing vessels, will you state what number of bulkheads the majority of sailing vessels have?

Mr. Adams: That is objected to as incompetent, irrelevant and immaterial. It depends upon what trade the vessel is in at the time.

Mr. Cluff: Suppose you let the witness testify.

Mr. Adams: I am making the objection.

The Court: State your point.

Mr. Adams: My point is, if the court please, that it is not material as to the bulkheads necessary in sailing ships engaged in the trade, in which a sailing ship might be engaged. The question before the court is what is the number of bulkheads that are necessary in the "Olympic", anchored in the position in which she was, and engaged in the trade in which she was.

Mr. Cluff: I find it difficult to follow how a barge can sink as quickly as a sailing vessel and I propose to show by this witness that by the standards of the sea this vessel had all the bulkheads that it required under the law, and under the regulations of the supervising inspectors and by the rules of

(Testimony of Albert C. Wilver.)

the classifications of the classification societies, and that she complied with all the standards of [1089] the time, not only when she was built, but now. The court will remember that in the case cited in the brief, that was the test used to determine whether a vessel was seaworthy, with or without bulkheads.

Mr. Adams: The bulkhead standards in the old days are not standard today, nor have they been accepted by the Bureau of Marine Navigation.

The Court: The court is in this predicament: It has not yet determined whether or not the regulations of the Department of Commerce are obligatory. The court is assuming, in approaching the subject, that there were proper regulations of the Department of Commerce, and it was the duty of this barge to comply with them. On the other hand, there is a test case pending, and if it should be determined that that was beyond the scope of the statute under which the Department of Commerce was working, then the seaworthiness of this boat might be in issue. In other words, your expert has testified as to the buoyancy of this boat——

Mr. Adams: I did not make myself clear apparently. I concede that it is an issue, irrespective of what the Bureau's requirements were. In other words, we have pleaded that the barge was unseaworthy, irrespective of those requirements, and I consider it in issue. The point that I raise here is that what was necessary with respect to a sailing ship engaged in the trade in which sailing ships

(Testimony of Albert C. Wilver.)

were engaged is no criterion of what is necessary for a barge anchored in the position in which this barge was anchored [1090] and used as a place where numerous people were gathered and fished.

The Court: The objection will be overruled.

Mr. Cluff: Will you read the question, Mr. Dewing, before you leave?

(Question read by the reporter.)

A. They have a collision bulkhead.

Q. And where is that bulkhead located?

A. It is located right in the bows.

Q. That is, within 20 feet of the bow?

A. Yes, sir; and also used for storing general stores, ship's stores, and chain locker and so forth.

Q. Do you recall any vessels in your line of experience that has any bulkheads after that collision bulkhead in the bow? A. No, sir.

Mr. Adams: May it be considered that my objection goes to this entire line of inquiry?

The Court: Yes.

Q. By Mr. Cluff: Do you know any rule of the supervising inspectors or—

The Court: They are the best evidence.

Mr. Cluff: Possibly so.

The Court: The rules of the supervising inspectors speak for themselves.

Q. Mr. Cluff: Yes. Do you know of any rule of any of the [1091] classification societies, Lloyd's, American Bureau, Bureau of Veritas, Norwegian Veritas, Danish Lloyd's, or any other classification

(Testimony of Albert C. Wilver.)

societies that require more than one bulkhead forward? A. No, sir.

Q. On a sailing vessel? A. No, sir.

Mr. Adams: Objected to. Just a minute, please. I move that the answer be stricken, if the court please, for the purpose of interposing an objection.

The Court: Motion granted.

Mr. Adams: I object to it upon the grounds it is incompetent, irrelevant and immaterial what those standards might have required as not material in this case, if the court please.

The Court: Well, they may or may not be material, Mr. Adams.

Mr. Adams: This ship certainly was not within one of those classification societies. They can't show that she met the requirements of any of those classification requirements and he has not attempted to show them.

Mr. Cluff: I am sure we can as far as bulkheads are concerned.

The Court: Objection overruled.

Mr. Cluff: Your answer, Captain?

(Answer read.)

A. No, sir. [1092]

Q. Captain, assume that—oh, by the way, you are personally familiar with the "Olympic", are you not? A. Yes, sir.

Q. Will you tell the court under what circumstances you became familiar with her?

A. You mean as a sailing vessel?

(Testimony of Albert C. Wilver.)

Q. No; as she was as a barge.

A. Oh, as she is now. Why, the owner of the vessel, Captain Anderson, I have known him a good many years and he sometimes comes to me for a little guidance, sometimes a little financial assistance, or something like that, wants me to give him a little reference, and so forth. And I had on two occasions sold him two vessels. I sold him a vessel called the "Kohala" and I sold the one called the "Olympic I", which was the original; and when he asked me, prior to buying the "Star of France", whether I thought it would be a good idea, I said absolutely, she was a fine ship and was very well suited for that particular trade that he intended to put it in.

Mr. Adams: May the answer be stricken upon the grounds it is non-responsive, it is a conclusion of the witness, no proper foundation laid, incompetent, irrelevant and immaterial?

The Court: It has not been taken as evidence as to the condition of the vessel. It is simply to show his familiarity with the vessel, explanatory of probably some questions [1093] yet to follow.

Q. By Mr. Cluff: After Captain Anderson brought the ship down here you inspected the vessel?

A. Yes, sir. He called me down—

The Court: Well, you inspected it.

A. —to the Los Angeles ship yard in my capacity as a marine surveyor and I went into her from keel—well, from stem to gudgeon, from one end to the other.

(Testimony of Albert C. Wilver.)

Q. By Mr. Cluff: So you are familiar with her structure?

A. I am familiar with it.

Q. So far as the hull was concerned, the hull was tight, staunch and strong at every time you saw it, wasn't it? A. Yes.

Mr. Adams: Objected to as leading and suggestive.

A. I issued a certificate and stating that she was, in my opinion, in every respect seaworthy.

The Court: Just a moment. The question was leading and suggestive.

Mr. Cluff: Oh, it was. I grant that. I thought it was a matter that was not seriously in issue.

Mr. Adams: Mr. Cluff, I don't want to mislead you. I consider it an issue in this case.

Mr. Cluff: All right.

Q. Do you know how thick the plates were, Captain, the shell plating? [1094]

A. I know they were built of iron, and offhand, I would say it was about seven-eighths or an inch. I guess she has wasted some, you know, on account of her age.

The Court: What was that? I didn't understand the question.

Mr. Cluff: He said about seven-eighths of an inch. A. Seven-eighths to an inch.

Mr. Cluff: Seven-eighths to an inch.

The Court: That is the plating?

Mr. Cluff: The plating, the shell plating on the outside. That would be the sides of the ship.

(Testimony of Albert C. Wilver.)

A. The lower line would be a little less, probably an eighth inch less or a quarter.

Q. At the time you examined her was there any evidence of leaking or any weakness, soft plates?

A. No, sir.

Q. Captain, assuming that that vessel had had one or more amidship bulkheads, that is, athwartships bulkheads, either forward or amidships, and one aft of amidships, let us say; now assume that she was struck by the "Sakito Maru", a Japanese full-powered twin screw steamer so that she was penetrated just about amidships a distance, as will be demonstrated by drawings made by an architect or by a surveyor at the time, of from 23 feet on the starboard side of the "Sakito's" bow and 20 feet on the port side, running from the deck, from above the main deck in as far as those [1095] marks would indicate; assume also at the time of impact the "Sakito Maru" was some 500 feet long, had been swinging her stern to port in a starboard turn under full starboard wheel; assume that as soon as the impact happened that starboard swing stopped and the "Sakito Maru" swung about 30 degrees, the stern of the "Sakito Maru" swung starboard about 30 degrees, the "Olympic" surging broadside under the impact and swinging at her bow anchors which evidently held; in that experience do you think it is possible that any bulkhead structure forward and aft of that point of impact, assume there had been such, would have survived the impact?

(Testimony of Albert C. Wilver.)

Mr. Adams: Just a minute, please. Objected to upon the grounds no proper foundation is laid, it calls for a conclusion of the witness, incompetent, irrelevant and immaterial.

The Court: Well, I am assuming yet that counsel is getting his cart before the horse is the reason that he has not produced his evidence here yet that the assumption is based upon. If counsel insists upon that he will have to bring this witness back tomorrow.

Mr. Adams: I don't think, if the court please, even if that evidence is tied in and proven tomorrow that there is sufficient foundation laid for this witness to answer the question which Mr. Cluff has put to him.

The Court: Objection overruled. [1096]

Mr. Cluff: Will you read it again? Do you understand the question, Captain?

A. I understand the question, Mr. Cluff.

Q. Yes.

A. I think you asked me whether a vessel who receives—is hit with a terrific impact so as to cut into her 23 feet, and with a swinging vessel, whether or not the bulkheads would hold.

Q. Yes; assuming fore and aft bulkheads.

A. You mean athwartship bulkheads?

Q. Athwartship bulkheads.

Mr. Adams: Just a minute, if the court please. In view of what the witness thinks his understanding of the question is, I renew my objection.

The Court: You mean in what respect?

(Testimony of Albert C. Wilver.)

Mr. Adams: The witness has said that the vessel was hit with a terrific impact.

The Court: He retracted that and said it was cut in 23 feet.

Mr. Adams: You mean if it was cut——

The Court: He did say "terrific" and, of course, there is no evidence here as to the character. I don't know whether you can assume that it was a terrific blow or not. It was cut something like 23 feet, and whether it was a terrific blow or not, but anyhow, the fact that the cut was 23 feet is the material point. [1097]

Mr. Adams: Another fact, if the court please, that the question put to the witness by Mr. Cluff does not assume anything with reference to the nature of the construction of the bulkheads. There is no assumption of facts on that basis.

Mr. Cluff: I will add that to the question.

Q. Let us assume that they are standard watertight bulkheads of plating a quarter of an inch thick or more.

Mr. Adams: No evidence what standard bulkheads are, if the court please.

The Court: Oh, gentlemen, now, if I had been half as technical with your expert as you are trying to be now, you would not have had one question in.

Mr. Adams: Well, I didn't ask him——

The Court: Just a moment, now. I am going to overrule the objection.

Mr. Cluff: All right. Now do you have the question, Captain, or would you like it read to you?

(Testimony of Albert C. Wilver.)

A. You had better read it. I might say something.

(Question read by the reporter.)

A. No; I don't believe it would.

Q. Now, what would happen after an impact like that with respect to the deck beams and stringers and the strength members of the vessel?

Mr. Adams: The same objection.

A. Well, I think—— [1098]

The Court: Same ruling.

A. Pardon me, your Honor. I believe that, in the first place, if you strike a vessel that hard—I am still going to insist on hitting that is a hard blow, 23 feet—the decks would fall down. That would be the first thing would happen; and the whole structure of the vessel would collapse and render those bulkheads asunder. They would be torn from the ship's side, either in one place or another.

Q. By Mr. Cluff: And then with the inrush-ing of the water, what effect would the inrush-ing of the water into the compartment where the hole was have?

A. Undoubtedly, if they were not properly braced by cargo or strengthened in the event of a salvage case, well, they would just simply collapse with the pressure of the water in a vessel that is partly laden. She may stand off if she is light. but loaded, no.

Q. One other question, Captain: Assume the col-

(Testimony of Albert C. Wilver.)

lision with the impact that I have given you in the previous question; assume further that the steamer or that the motorship, the colliding ship, came to rest after moving from the point of impact and going broadside with the "Olympic" a distance of about 30 meters, and then with her screws going full astern came to rest and the engines were stopped, would there be any separation of the two vessels by drifting of momentum or anything, in your opinion?

A. I am afraid I quite didn't understand you, Mr. Cluff. [1099]

Q. Let us see if I can reframe the question. Assume the impact with the penetration to the extent that I have described here to you in the previous question, that is, 23 feet in, and the swing of the stern; assume that the effect of that impact was to drive the "Olympic" about 30 meters or more in the direction in which the "Sakito Maru" was proceeding; assume that the "Sakito Maru's" engines were stopped, being reversing and full astern at the time of collision, then just as she comes to rest they stop, do you think the vessels would have separated under those circumstances?

Mr. Adams: If the court please, I object to that upon the grounds it is speculative, no proper foundation laid, it calls for a conclusion of the witness, incompetent, irrelevant and immaterial.

Mr. Cluff: I am inclined to think, too, there are some more factors that ought to be put in there.

(Testimony of Albert C. Wilver.)

I think I will withdraw that. It is not of great importance, anyhow. All right, I have no further questions.

Cross-Examination

Q. By Mr. Adams: Captain Wilver, the deck of that barge would certainly be less apt to collapse in the manner in which you have described if there were collision bulkheads athwartships, would it not?

A. It might carry the bulkheads with them. It all [1100] depends on the proximity of the point of impact.

Q. To the bulkheads?

A. To the bulkheads; yes, sir.

Q. Would the opinion which you have expressed be changed if it were shown to you that even without such bulkheads the decks of the barge did not collapse?

A. Well, it would be hard for me to conceive that they would not collapse to some degree, Mr. Adams.

Q. Let us assume that they did not collapse, except right in the immediate vicinity of the impact.

A. We will assume that; yes.

Q. All right. Now, do you still believe that an impact just forward of her main mast would be of such a nature as to rip up the decks and destroy the bulkheads which might be, let us say, 30 feet away from the point of that impact?

(Testimony of Albert C. Wilver.)

A. It wouldn't rip up the decks, Mr. Adams, not speaking about ripping up decks.

Q. Would it cause them to collapse?

A. There is a great probability that the pressure of the water would collapse them; but the greatest danger is that when the vessel receives a wound like this that she immediately quivers all over, and then usually the bulkheads let go at the hull plating on the side.

Q. Is that true of all collision bulkheads and covering all vessels?

A. Well, I presume there might be some exceptions, [1101] and I think in a vessel with a great big open hole where there is nothing but an even distribution of the ballast throughout her, for practically her whole length, I think that condition would exist; yes.

Q. And that type of vessel that you just spoke of there is no buoyancy whatever, is there, after a hole is stove into her side below the water line?

A. That is right.

Q. No buoyancy whatsoever?

A. She fills up with water, she sinks just the same as any other ship.

Q. If there were some collision bulkheads, either aft or forward of the point of impact, those bulkheads would add to her buoyancy, would they not?

A. Yes; they would add to her buoyancy providing they were left intact and where they are of such a nature that they would be able to stand the pressure.

(Testimony of Albert C. Wilver.)

Q. All right. Now, where does the pressure come from that you speak of?

A. Where does the pressure come from?

Q. Yes; where is this pressure?

A. From the outside pressure.

Q. The outside pressure?

A. The water rushing in there.

Q. Rushing into the compartment that is flooded? [1102]

A. Yes; and also the pressure against the ship on the bottom.

Q. Well, there is always that pressure against the ship on the bottom, isn't there?

A. Yes; but the hull is stronger, and a whole lot heavier than the bulkheads. A ship like that, her bulkheads, I think, according to the classification society, only needs to be a quarter of an inch.

Q. I am not sure that I understand what you mean by the pressure on the bottom. I can understand what you mean——

A. No; I mean on the hull as the vessel is immersed in the water, the pressure on the hull naturally is greater down below than it is at the edge of the water.

Q. Yes; I see what you mean.

A. That is a point I want to bring out. Mr. Adams.

Q. Such a collapse of the decks and a tearing away of the bulkhead from the sides of the hull would permit water to leak into the water-tight

(Testimony of Albert C. Wilver.)

hold, I suppose, to some extent; is that what you mean, that it would not thereafter be water-tight?

A. That is right.

Q. But it is true that, depending upon the size of those leaks, that water would not rush into those water-tight holds in the same manner that water would rush into the compartment which was flooded by the hole stove into that compartment, would it? [1103]

A. Well, that all depends on the nature and the size of the aperture of the hole.

Q. Water could gain access to those water-tight compartments much more slowly by virtue of those bulkheads, even though they have been pulled asunder to some extent, isn't that true?

A. Oh, yes; for a short period.

Q. For a short period.

A. Yes. Oh, yes; that is true.

Q. If nothing was done to pump out those compartments and to keep out that water which was seeping in, then I suppose that is your theory that the barge would ultimately sink; in other words, the buoyancy of the water-tight compartments would be destroyed by the water seeping in there and there being no efforts made, successful efforts, to keep air in the water-tight compartment to keep the water out, is that what you mean?

A. Well, that again depends on how large the hole is and how much pressure is on the outside, and whether or not that bulkhead has cargo back of it and it is reinforced, and so forth.

(Testimony of Albert C. Wilver.)

Q. Such a barge with such bulkheads, additional bulkheads, even though they were pulled apart in the manner in which you have indicated, would not sink as rapidly after having a hole stove in her side in the manner mentioned as she would without such bulkheads, isn't that a correct [1104] statement?

A. That is a correct statement; but, of course, that depends again on how large the aperture is, how far they tore away, and depend, too, on the strength of the collision.

Q. Now, taking into consideration this impact that you have taken into consideration in giving your answers— A. Yes.

Q. —and the effect of that impact upon those water-tight bulkheads that you speak of and the decks? A. Yes.

Q. With such water-tight bulkheads, such a barge would remain afloat much longer than it would without them, isn't that correct?

A. That is right what I believe, Mr. Adams.

Q. How much longer do you think it would remain afloat?

A. Well, of course, that is theorizing to the extreme.

Q. Well, you have been theorizing all the way along, haven't you, Captain?

The Court: There is no occasion for argument, gentlemen.

A. But I am just simply unable to answer that

(Testimony of Albert C. Wilver.)

question, Mr. Adams, about how long, without knowing exactly what the amount of opening we have.

Q. Assume this, Captain Wilver, that without such bulkheads and with such a hole stove in her side, the "Olympic II" filled up and sank within a period of three [1105] and one-half minutes—

The Court: A minute and a half, isn't it?

Mr. Adams: Pardon me, no; from ten and one-half, if the court please, to 14.

The Court: Oh, yes.

Q. By Mr. Adams: In a period of three and one-half minutes?

A. Was that while the ship was in the position of impact?

Q. Part of the time, part of the time. If there were water-tight bulkheads, both fore and aft of the place that that hole was stove in, don't you think she would have remained afloat at least five minutes longer?

A. That all depends again. I think probably that if she had bulkheads and if the colliding steamer had remained in the hole and kept or helped to keep her afloat, I think she would have.

Q. Just disregard that, because that was not the case. The boats separated, so just disregard that.

A. Well, I still think it all depends on how far the bulkheads let go.

Q. How far do you think the bulkheads would let go?

A. I think they would let go practically all along the side.

(Testimony of Albert C. Wilver.)

Q. And what effect do you think that would have upon the continuity and length of the stability of the vessel [1106] before she sank?

A. I think that the inrushing water then would just collapse the bulkhead entirely and lay it flat.

Q. By the Court: Captain, you have heard here a desription of the size of that hole in this vessel. Assume there would only be room in that vessel for how many bulkheads, at the most, standard bulkheads?

A. Standard bulkheads in that ship? It is not standard, your Honor, in that type of ship. We only have one bulkhead in there, and that is the collision bulkhead. That is the standard.

Q. What size is that bulkhead?

A. That bulkhead reached from the keel, or the keelson of the vessel up to the under part of the deck at a point about 20 feet abaft of the stem. That would be 20 feet in the forward end of the ship.

Q. About 20 feet?

A. Oh, yes; exactly.

Q. Supposing you wanted to put another bulkhead, or two, or three or four there, where would you put them?

A. It all depended, your Honor. We could put them anywhere you wanted to.

Q. You could fill it up with bulkheads?

A. Absolutely; put a hundred in there if we had to.

(Testimony of Albert C. Wilver.)

Mr. Adams: Is the court through?

The Court: Go ahead; that is all. [1107]

Q. By Mr. Adams: Captain Wilver, are you acquainted with the requirement of the Bureau of Marine Inspection and Navigation with respect to bulkheads for coastwise vessels, steam vessels?

A. Steam vessels?

Q. That is right.

A. No; I can't say that I am, Mr. Adams. I haven't much to do with steam vessels since I came ashore.

Q. Your experience since you came ashore with steam vessels has been very slight, is that correct?

A. Very slight, yes. I have been mostly acquainted with the fishing industry and harbor vessels.

Q. Now, assume, Captain Wilver, that on the "Olympic II" the bulkheads were put in the hold in that ship to meet the requirements, each bulkhead would be not less than 80 feet apart, one-fifth of her entire length apart, whichever is the lesser, and her entire length was 258 feet—

Mr. Cluff: Those are steamer standards you are reading.

Mr. Adams: I am reading the requirements that are for coastwise vessels which are steamers, which are referred to in the Bureau's specifications delivered to Captain Anderson.

Mr. Cluff: Just read him the sailing vessel standards.

(Testimony of Albert C. Wilver.)

Mr. Adams: I am reading the requirements in this mimeograph.

The Court: Gentlemen, just proceed. There is no objection. [1108]

Mr. Adams: Will you read the question?

(Question read by the reporter.)

Q. By Mr. Adams: Don't you think, Captain Wilvers, that bulkheads constructed in that manner aboard the "Olympic" would certainly have given her greater structural strength?

A. It would be pretty hard to improve on that structural strength on that vessel, Mr. Adams, because she was built under Lloyd's special supervision originally.

Q. In 1877?

A. Which were more stringent then than they are today. That is borne out by the fact of the weights of her plates.

Q. Do you think that those bulkheads would have increased her structural strength in any respect?

A. Well, to say "in any respect" would be—I say it would in some respects, yes; although that vessel was constructed originally to meet all the requirements, without any bulkheads.

Q. I am asking you now to consider that she is having bulkheads put in to meet these requirements.

A. Yes.

Q. If these bulkheads were put in to meet these

(Testimony of Albert C. Wilver.)

requirements and if the "Olympic" received the blow which has been mentioned here, the hole in her side, do you not think that her buoyancy would have been materially increased by such bulkheads? [1109]

A. It all depends on the manner under which these bulkheads would stand up under that terrific impact.

Q. It might have been increased; I mean the buoyancy might have been increased?

A. Oh, absolutely, there is that possibility.

Q. It is a strong possibility, isn't it?

A. No; I would say it was a very remote one.

Q. But there is a possibility; that is your testimony?

A. Well, there is a very remote one.

Q. By the Court: They have to be put in there for a purpose, don't they? They are put in there for the purpose of increasing the buoyancy?

A. They are put in there mainly, in most ships, your Honor, to separate the engine room from the cargo compartments.

The Court: I know, but the requirement on these boats to put in bulkheads is to increase the buoyancy of the vessel, is that not true?

A. I wouldn't say that is true altogether in most ships.

Q. Don't they put them in as a safety measure?

A. No, sir; not necessarily. They put them in to enable the vessels to carry bulk cargoes in bulk, like wheat, and they put athwartships bulkheads in there

(Testimony of Albert C. Wilver.)

and fore and aft bulkheads in there, but to say it is solely to prevent them from being run down and sunk, I wouldn't say that ; no, sir. [1110]

Q. By Mr. Adams: Now, Captain, no one is insinuating that these bulkheads on these other ships that are carrying cargo are put in solely to prevent them from being run down.

A. No; I understand. I am just explaining.

Q. But they serve some purpose; they serve to divide a hold and they also provide a water-tight compartment; isn't that correct?

A. Well, it is correct in a certain degree, yes, Mr. Adams, it is.

Q. Isn't it a fact the "Olympic", constructed as she was on the day of the collision, with 1500 tons of ballast in her, if a hole was stove in her side below the water line she would go down like a plummet, wouldn't she?

A. Yes; she would if there wasn't some means taken there to prevent her from doing so.

Q. Have you ever made any study of the requirements of collision bulkheads on various types of vessels other than sailing vessels?

A. It all depends what you mean by studies, Mr. Adams.

Q. You are not a naval architect, are you, Captain? A. No, sir.

Mr. Adams: Nothing further.

Mr. Cluff: No further questions.

The Court: That is all.

Mr. Cluff: Thank you, Captain Wilver. If the court please, I am out of witnesses. I did not anticipate that [1111] we would close quite this soon.

The Court: How long is it going to take to finish the case?

(Discussion as to probable length of case omitted from transcript.)

The Court: The court will take a recess until 10 o'clock tomorrow morning, and if these gentlemen can agree in the meantime, you will not have to bring your witness.

(An adjournment was taken until Wednesday, September 24, 1941, at 10 o'clock a. m.) [1112]

Los Angeles, California
Wednesday, September 24, 1941
10 a. m.

The Court: All right, gentlemen, proceed.

Mr. Cluff: If the court please, possibly at this time we have rather lost sight of the fact that there are other claimants here, and I think maybe the other claimants should be advised that if they have any evidence to bring forth—

The Court: I will do that when you have finished. They will be advised.

Mr. Cluff: I will call Mr. Reeder.

JOHN H. REEDER

called as a witness on behalf of Libelant in rebuttal, being first duty sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. John H. Reeder.

The Clerk: Spell the last name, please.

A. R-e-e-d-e-r.

Direct Examination

Q. By Mr. Cluff: Mr. Reeder, you are a warrant officer in the Coast Guard?

A. That is true.

Q. What is your official rank?

A. Boatswain. [1113]

Q. Do you command a vessel? A. I do.

Q. And did in 1940?

A. At that time, no, not all that time; part of the time.

Q. Not all of 1940. What vessel is it that you commanded?

A. Coast Guard Cutter "Cahoone".

Q. Calhoun?

A. "Cahoone," C-a-h-o-o-n-e.

Q. In April and May, 1940, were you in command of that vessel? A. Part of the time.

Q. Did you in the course of your official duties on that vessel, in April and May of 1940, take certain bearings with respect to three fishing barges anchored on Horeshoe Kelp? A. I did.

(Testimony of John H. Reeder.)

Mr. Adams: Just a minute, please. If the court please, I object to the question in so far as it calls upon the witness to determine what his action was as an official duty, and as calling for a conclusion of the witness.

The Court: Isn't the material part he took the bearings?

Mr. Cluff: Oh, yes; I think the material thing is whether he took the bearings. [1114]

The Court: And as far as they were official, of course, that is a matter of opinion.

Q. By Mr. Cluff: By the way, Mr. Reeder, you have a chief mate's license from the inspectors of hulls and boilers, in addition to your navy warrant?

A. Chief mate, unlimited license, any ocean, any tonnage.

Q. Can you tell us when you took these bearings?

A. When?

Q. Yes; when, please.

A. Well, the date is indicated. April the 21st, 1940, and May the 17th, 1940.

Q. Have you laid the bearings down on this chart from your records? A. I have.

Q. What sort of bearings were those?

A. Compass bearings.

Q. Compass bearings taken from the "Cahoone"?

A. They were technically called compass cross-bearings from the "Cahoone" instruments.

Q. I wonder if you would state to the court just where you stationed the "Cahoone" and how the bearings were taken.

(Testimony of John H. Reeder.)

A. Close alongside of each vessel, and then we took bearings on the pelorus of prominent objects, and the nearest prominent objects, and then figured the distances between the "Cahoone" and the ship we were planning on finding the bearings of, which would be maybe 50 yards close [1115] aboard of each vessel. Instead of going on board the vessel to take the bearings we took them right off the "Cahoone", or I did, and then I would judge it would be about 50 yards of it or 60 I allowed for that in plotting the position.

Q. I wonder if you will state what the bearings were, first, with respect—let's see; it was the "Point Loma" and the "Samar" that you took first?

A. The "Samar" and then the "Point Loma" in order.

Q. All right. Will you state the bearings and distances as you obtained them that day?

A. The "Samar" bore—cross-bearings indicated that the position of the "Samar" was 144 degrees true, three miles from Los Angeles lighthouse. [1116]

Q. By Mr. Cluff: Three miles? That is marked on this chart, I think "Rainbow"?

A. "Samar".

Q. And the position noted for the "Point Loma" bore how?

A. 159 degrees true, 3 miles from Los Angeles lighthouse.

Q. And the "Olympic"?

A. 160 degrees true 3.2 miles; a little bit further out.

(Testimony of John H. Reeder.)

Q. You have checked this chart from your records made at the time? A. Yes.

The Court: Are those miles—

A. Nautical miles, your Honor.

Mr. Cluff: I wonder if you would take the dividers and compute for the record, by measurement on the chart the distance between the respective vessels; let us say first between the "Olympic" and the "Point Loma". A. 400 yards.

Mr. Adams: What does that represent, Mr. Cluff?

Mr. Cluff: The distance between the position checked for the "Olympic" and the "Point Loma". And between the "Point Loma" and the "Samar"?

A. 1600 yards.

Q. Between the "Olympic" and the "Samar"?

A. 1800 yards. [1117]

Q. 1800 yards? A. Yes.

Mr. Cluff: I offer the chart in evidence.

The Court: That will be admitted.

The Clerk: "Olympic's" Exhibit No. 16.

BOR

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NOTED BY THE CHIEF
FOR THE NAVY CHIEF

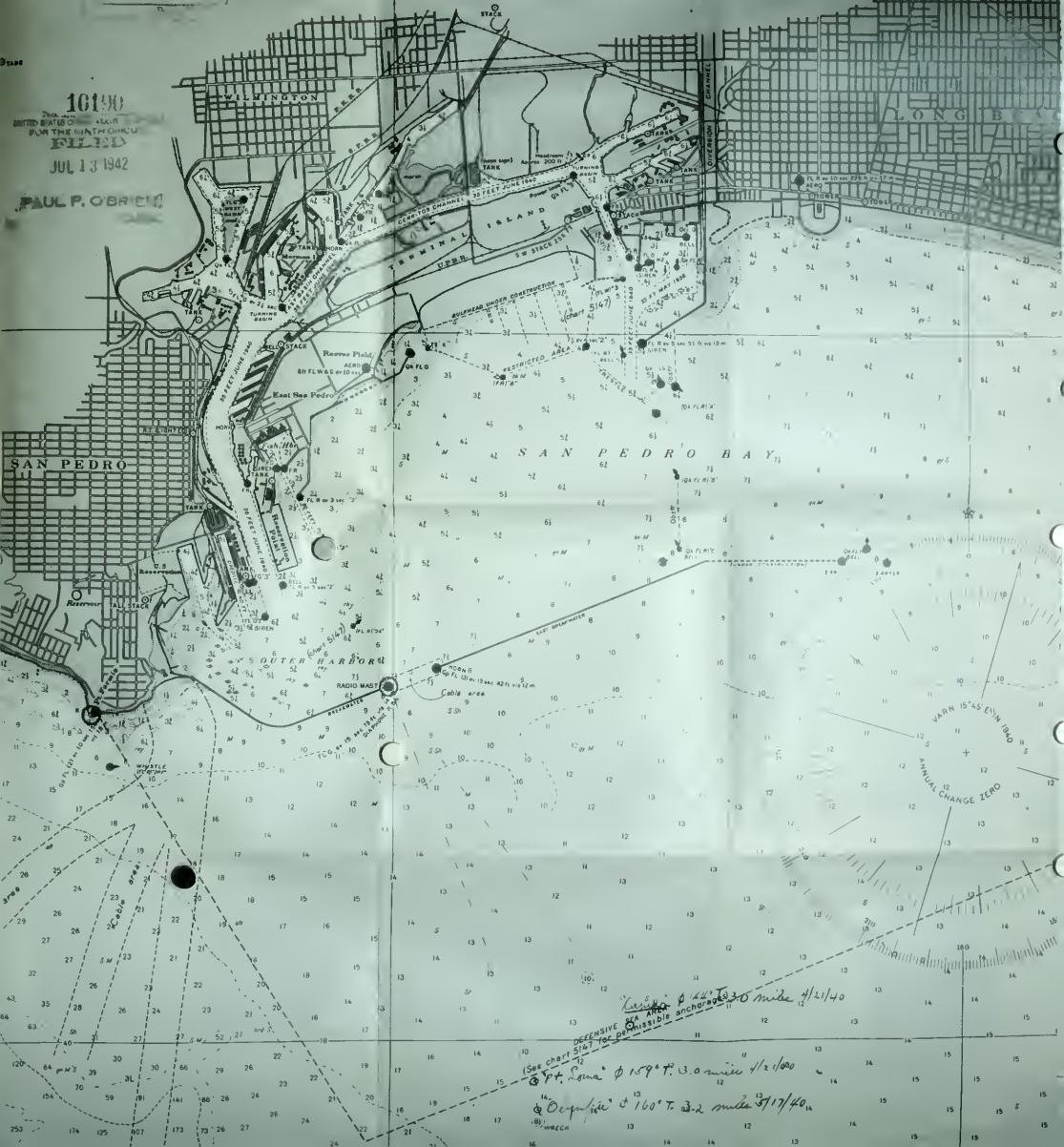
FILLED
JUL 13 1942

PAUL P. O'BRIEN

The controlling depth through the channel, on the date given, is
approximately the same as the old channel, or, in a moderate ratio, not
more than twice the old channel. The new channel has been well
shouldered, particularly at the edges. It would not be inferred that the
change in the channel was caused by the order of the impression
on the bottom of the channel, or that the order of the impression
has not since decreased in places across the entire width.

Detoured, to be reestablished.
TTR Temporarily replaced by a red buoy.
TTR Temporarily replaced by a green buoy.
TTR Temporarily replaced by a float which right buoy.
TTR Temporarily replaced by a float red right buoy.
TTR Temporarily replaced by a float red right buoy.

SIGNAL HILL (WHITE TOWER)



(Testimony of John H. Reeder.)

Mr. Adams: The only objection I have, if the court please, is to the materiality. The point I have in mind is that the positions taken might be so remote in time as not to indicate the position of the barges at the time of the collision. I will endeavor to demonstrate by cross-examination if any such condition existed.

Cross-Examination

Q. By Mr. Adams: Captain Reeder, after the date shown on that chart, did you take any bearings alongside of any of those barges? A. No.

Q. Do you know whether any of the barges shifted her position after you took the bearing for that barge? A. No, I do not.

Q. Do you consider, Mr. Reeder, that a sextant observation might be more accurate than the cross bearings that you took? A. They are.

Mr. Adams: No further questions. [1118]

Cross-Examination

Q. By Mr. Black: The distances that you gave, of 400 yards, 1600 yards and 1800 yards, I take it are estimated distances from the exact spot where the bearing was taken, and take no account of the length of the craft?

A. When I took the bearings, we were right close alongside of each vessel that we were plotting the position of, say, may be 25 or 50 yards, and that was taken care of in plotting the position.

Q. What I had in mind is this: Assuming that you were midships—

(Testimony of John H. Reeder.)

A. Assuming it was the center of each craft.

Q. The center of each craft, it takes no account of the length of the craft?

A. No, not at that distance. Our bearings are taken merely to find the craft, if we wanted to find them in foggy weather.

The Court: What is that answer?

A. Our position merely of plotting them on there, is in case we want to find the craft in foggy weather, or we had some reason why we wanted to go out there, or have some other vessel in the coast guard, or the fishing fleet know what the position of it would be. We make it a practice to take bearings of out-lying objects offshore. [1119]

Redirect Examination

Q. By Mr. Cluff: Mr. Reeder, in your experience what would you say was the margin of error of bearings of that kind?

A. According to plane trigonometry the degree of error would make a mile difference in 60. At that particular distance, 3 miles off the breakwater, would be one-twentieth of a mile.

Q. So the margin of error would be only a few feet? A. One-twentieth of a mile.

Mr. Cluff: That is all. [1120]

WILLIAM JOHN ALDERSON

called as a witness on behalf of libelant in rebuttal, being first duly sworn, testified as follows:

The Clerk: State your name.

A. William John Alderson.

Direct Examination

Q. By Mr. Cluff: Mr. Alderson, you are a marine surveyor by profession? A. Yes, sir.

Q. For many years here you have been engineer and structural surveyor for Lloyd's? A. Yes.

Q. Did you, at the request of Mr. Nix, attorney for the Hermosa Amusement Company, take the measurements of the bow of the "Sakito Maru" shortly after September 4, as she lay in the water at Bethlehem? A. I did.

Q. You made a report at the time?

A. Yes.

Q. A written report? A. Yes.

Q. Do you have a copy of that with you?

A. Yes.

Q. I will ask you if this instrument I am handing you is the original report. [1121]

Mr. Adams: I object, if the court please, as long as the witness is on the stand, to the introduction of any report.

Mr. Cluff: I am not going to offer the report.

Q. Are you able to testify, Mr. Alderson, as to the measurements that you took, from memory, without reference to your report?

A. It is a good time ago. I put them down on paper as I took them.

(Testimony of William John Alderson.)

Q. And that was embodied in the report?

Mr. Adams: There is no objection to his refreshing his memory from the report.

Q. By Mr. Cluff: Let me ask you this, Mr. Alderson——

Mr. Adams: I would like to see the document he is going to refresh his memory from.

Mr. Cluff: Yes. I showed it to you last night. Here is my copy. He has his own. You might have my copy, is you want to keep it in front of you.

Q. Mr. Alderson, I show you a picture, "Olympic's" Exhibit 6, and I will ask you if that appears to be a photograph of the starboard side of the "Sakito" about the time you took the measurements?

A. Yes, that is it; that is just about it.

Q. I show you another photograph, Yokota Exhibit No. 10, and ask if that is a photograph of the port side? A. Yes. [1122]

Q. You have these photographs in your file, have you not? A. I have copies.

Q. Will you point out to the court where you took your measurements? [1123]

A. There is a very distinct bulge in here. We finished at the double riveted angle. There is a line up there; that is a line for the forepeak bulkhead. There is a very distinct indent. We finished exactly at that angle. The angle itself was partly bent.

Mr. Adams: Will you, for the record, describe the point?

A. The double riveted angle——

(Testimony of William John Alderson.)

The Court: Just a minute.

Mr. Cluff: The witness indicated a point on Yokota Exhibit 10, being the port side, as the double line showing the forepeak bulkhead; the double line of rivets showing on the photograph just aft of the rope which is hanging down from the bulwark.

Mr. Adams: And the only row of double rivets forward of the Japanese flag symbol, and between that rope?

Mr. Cluff: Yes.

Q. Will you state now from where you took the measurements on the starboard side?

A. The starting point was the stem of the ship, next to the water, over here, to the end of the damage.

Q. Indicating on "Olympic" Exhibit No. 6 the after edge of the after hole, which shows in the photograph?

A. Right down to this end; right down to the edge of the hole.

Q. Mr. Alderson, refreshing your recollection from your report, will you tell the court the fore and aft [1124] distance of the indicated damage, according to those measurements? Tell us the port and starboard side roughly, and you may refer to your report.

A. I had them all noted. I don't depend on memory for things like that. On the port side of the stem, under the bulkhead, 20 feet 3 inches on the line of the damage.

Q. You say this is on the port side, 20 feet 3 inches?

(Testimony of William John Alderson.)

A. Yes. That is on the line of the damage. That ship is narrowing all the way down. That represents the line of the damage where we took these measurements, 20 feet 3 inches on the port side, and 23 feet on the starboard side.

Q. Those are exact measurements taken with a tapeline?

A. I took those measurements with it myself because I went there to take them.

Q. You caused to be made—oh, one other question. Yes. You caused to be made a sketch which I will now show you, and I will ask you if that sketch indicates the distances of penetration, or the distances to which you have just testified.

A. Yes; in my opinion, it does.

Q. I note on the sketch here a cross-ship's line, athwartship's line marked "12 feet". A. Yes.

Q. Will you tell us what that line is?

A. That really represents the position of the forepeak bulkhead. [1125]

Q. The forepeak bulkhead?

A. At that particular point.

Q. And did you actually measure that bulkhead?

A. What?

Q. Did you actually measure that bulkhead?

A. Actually measured it. I had one end of the tapeline.

Q. Where did you take that measurement?

A. From the inside.

Q. That is, from the inside of the forepeak or the inside of the after hold?

(Testimony of William John Alderson.)

A. When I measured that it was the following day, you know, and the stagings were all up and this hole had been cut away, all those damaged platings had been cut away and we were able to go in through that.

Q. Went right in through the hole?

A. Yes.

Q. So you took the measurement, the interior measurement of the bulkhead from the inside?

A. One man had one side and I had the other end of the tape.

Q. Were those measurements taken to clear inside of the shell plating? A. What?

Q. Were those measurements taken to clear inside of the shell plating or to the inside of the frames?

A. Clear inside on each side. [1126]

Q. And that distance you found to be 12 feet?

A. Which?

Q. 12 feet? A. 12 feet. 12 feet across there.

Q. Mr. Alderson, in your opinion, does the drawings—that is, in your opinion from the physical evidence you found on the ship and the measurements you have taken, does the drawing which you made and the dimensions indicated thereon indicate the minimum penetration of the bow on the "Sakito Maru" into the ship that she struck?

Mr. Adams: Mr. Cluff, I object to the question because I think that is too hypothetical for this present witness to answer, inasmuch as he has not been informed about the angles of approach of the "Sak-

(Testimony of William John Alderson.)

ito". I have no objection to the diagram going in for what it is worth, but I do think that this question just put to the witness is not a fair one in view of this—

The Court: May I ask, gentlemen, isn't it apparent that those holes and markings were caused by a penetration and it would be self-evident that that was the extent of the penetration?

Mr. Adams: Subject to the explanation given by Captain Sato as to how damage on the starboard side might have been caused further aft than on the port side.

The Court: I know, but the Captain has testified as to those distances. [1127]

Mr. Adams: Yes. But here is my point, if the Court please: This diagram shows that the "Sakito Maru" went into the "Olympic" at an angle like that (illustrating). Now, the witness has not been asked to assume any facts concerning the angle that the "Sakito" penetrated the "Olympic".

The Court: The 3 feet difference on each side would indicate the fact that she penetrated at an angle?

Mr. Adams: No, if your Honor please.

Mr. Cluff: There is no question about that.

Mr. Adams: If the Court please, of course, that is one inference that can be drawn from it; but Captain Sato, if the Court will recall his testimony, testified that damage on the starboard side might have been caused further aft by virtue of the fact that

(Testimony of William John Alderson.)

the "Sakito's" stern swung to her right as the stern of the "Olympic" swung; and he thought that the damage might have been caused a little further aft on the starboard side by virtue of the motions of the ship at that time.

The Court: How are you going to get around this feature of it: It is your theory that the boats immediately separated of their own--you might say, the "Olympic" fell away by its own weight?

Mr. Adams: Yes; that is right, a momentum—

The Court: And if it fell away, that damage would not be done by still going in the hole? [1128]

Mr. Adams: Of course, the swinging might have taken place before the vessels did separate. Of course, the damage could not be done after the vessels separated.

The Court: No.

Mr. Cluff: It occurs to me, swing or no swing, the hole indicates that the bow was 23 feet into the structure, and I can't get away from it. I think the question is more or less obvious.

The Court: I was just wondering why you were asking it.

Mr. Cluff: Maybe I am being obvious.

The Court: I think it is a matter for you gentlemen to argue.

Mr. Adams: I think it is argument.

Mr. Cluff: Very well. I would like to offer into evidence the drawing from which Mr. Alderson has just testified.

(Testimony of William John Alderson.)

Mr. Adams: Subject to its materiality, for the reasons which I have indicated by my remarks to the Court, I have no objection, but I do object to its materiality for those reasons.

The Court: Well, we have nobody to take the measurements. Did you gentlemen get together on any measurements that were taken by the diver?

Mr. Adams: We haven't yet, no, if the Court please.

The Clerk: That will be Exhibit 17. [1129]

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Olympic 17

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(Testimony of William John Alderson.)

Mr. Cluff: I don't think there is any claim the diver took any measurements.

Mr. Adams: I don't know. I don't think so, but I don't know.

Mr. Cluff: Mr. Alderson, let us get this separated from the ones that are in evidence. Those are yours, I think. All right; I have no further questions from Mr. Alderson.

The Court: I would like to ask a question.

Q. You say this hole was big enough for a man to crawl through?

A. Oh, yes; after it was cut away it was rather open then, because it was all jagged edges before. But after cutting away, they put plates on for temporary repair for the ship to go away, and in order to do that they cleared off all that damage and that was large enough to go through. Oh, yes, you could get through the hole.

Q. What was the thickness of the plates?

A. About half an inch.

Mr. Adams: If the court please, the witness testified he crawled through after the hole was cut out.

The Court: I understand that, but I had a misconception of the picture. It did not seem to me that the holes were that size.

Q. Were there any measurements of those holes before they were cut away? [1130]

A. I didn't have any.

Mr. Adams: None other than what the Captain has already testified to.

(Testimony of William John Alderson.)

Q. By Mr. Cluff: Could you see, Mr. Alderson, from the size of the plate—could you give the court any idea how big those holes are?

A. Those frames are about two foot apart, 24 inches, your spacing of those frames usually. I didn't measure them, but according to rules, a ship of that size, the frames in the fore-peak should be spaced 24 inches; so if you just take where those single lines come in, you see that would be 24 inches there, so that hole must have been 4 feet or 4 feet 6, I should say, from forward to aft.

Q. You determine where the frames come by the rivets, of course, the lines of rivets?

A. Yes; just judging by that, going by that. I didn't measure them.

Mr. Cluff: Thank you.

Cross-Examination

Q. By Mr. Adams: I show you a drawing made by one of the officers of the "Sakito Maru", which is "Sakito's" Exhibit No. L, which purports to show the damage done on the port side of the "Sakito". Will you examine that, please, Mr. Alderson?

A. Yes. [1131]

Q. Now, based upon your examination and survey of the "Sakito Maru", does that diagram show substantially the portion of the "Sakito's" bow on the port side that was damaged?

Mr. Cluff: Are you referring to above or below the water line?

A. I should say yes. There is an indent in the

(Testimony of William John Alderson.)
valve and then, of course, the scoring and the indents more or less right back here.

Q. By Mr. Adams: Did you count the frames?

A. I would just like to count those, if you don't mind.

Q. Yes. A. Yes; I guess that is right.

Q. Is that about right?

A. That is the tenth space. That will be the forepeak bulkhead down there.

Q. When you took your measurement or distance that that damage extended aft from the stem did you have your tape at the stem on the level of the water line or on what level?

A. I had the tape right here.

Q. You are indicating the—

A. As far as I could remember, I had it right there, which was in the neighborhood of that indent.

Q. And that is the dent on the stem?

A. You see, the further edge of that indent back to here.

Mr. Adams: Let the record show the witness is indicating [1132] the dent in the stem.

Mr. Cluff: Yes; in the way of the top of the damage.

Q. By Mr. Adams: Mr. Alderson, I show you another diagram which was made by one of the officers of the ship, which purports to show the damage done to the starboard side. A. Yes.

Q. Will you examine that and then tell us whether that diagram substantially shows the damage to the

(Testimony of William John Alderson.)
starboard bow of the "Sakito"?

A. Yes; I should say it does. I should say it does.

Q. Wasn't there, Mr. Alderson, some indentation in the plate just aft of the hole on that starboard side, that is, the second hole from the stem?

A. There was a little, but not much. Of course, that hole is further aft from the one on the other side. That is the position from the bulkhead, because when you looked through the hole you could see the bulkhead that way, see the solid plate, looking that way. But that is just about the extent of the hole. These were all indented, they were all forced in. All the damage was forward, both on this hole and on this hole the damage was forward. The plates were forced in.

Q. I see. Your tape run from the stem only to the edge of the hole, or did it run as far aft as the hull showed any indentation or marking? Do you see what I mean? [1133]

A. Yes; I see what you mean. Just to the end of that hole. Of course, there was a round edge on it. It was not a sharp edge to the end damage I would say, to the end of where the plate was bent in.

Q. Isn't it true, based upon your experience, that the bent portion of the plate might extend a little further aft than where there was actually any object penetrating the hole, or penetrating the hull?

A. It might be just a matter of an inch or two.

Q. From this photograph here, "Sakito's" Exhibit No. 6, it would appear that the object which

(Testimony of William John Alderson.)

made that hole in the hull might be considerably forward than the after edge of the hole itself. I am wondering if you would agree with that possibility?

A. Not in that case I wouldn't, because the photograph shows pretty plainly. There is the area of damage. You can see where that had been all scored around there, which is just about in the line, you see, with the end of the damage. You would always allow a little bit for the rounding of the plate. If the plate is punched in it goes in beyond the hole, it will do that.

Q. That is what I mean.

A. But you can see right here that is where the plate had been heavily scored and rubbed—

Q. Yes.

A. Evidently from the collision, but that is all you [1134] could surmise, been rubbed and scored. It must have been from some heavy, hard object.

Q. Mr. Alderson, did you measure the distance above the water line that those holes extended?

A. No. It was all staging when I got there. There was all staging for the men to work on, you know, and I was on the staging when I measured those measurements.

Mr. Adams: That is all.

Mr. Cluff: There is a picture that is rather enlightening on that, Mr. Alderson.

Mr. Montgomery: I would like the record to show the number of the exhibit upon the sketches.

The Court: The record already shows the exhibit number, Mr. Montgomery.

(Testimony of William John Alderson.)

Mr. Black: May I ask Mr. Alderson a question, Judge?

Cross-Examination

Q. By Mr. Black: Mr. Alderson, are you familiar with the barge "Olympic II"?

A. No; I have seen her and that is all. I don't know anything about it. [1135]

Q. Are you able to express any opinion whether it would be possible for the "Sakito Maru" to have penetrated as deeply as your observation indicates, assuming that she had a draft of 24 feet forward and 27 feet aft, and assuming that she struck a barge with an iron hull, at anchor, which had plates three-quarters of an inch to an inch thick; I ask you whether you have any opinion whether it would be possible to penetrate that far at a speed of a knot or a knot and a half?

Mr. Adams: I object to it upon the grounds—

A. I think it is quite likely. The "Sakito Maru" was loaded very heavily.

Mr. Adams: I object to it upon the ground that there was no foundation laid to qualify the witness to answer such a question.

Mr. Black: Just a moment. The witness is going ahead with the answer.

Mr. Adams: I think my objection is in the record, isn't it, Mr. Reporter?

The Reporter: I think you had better repeat it, Mr. Adams.

The Court: I don't think there is anything here

(Testimony of William John Alderson.)
to show that he is qualified to express an opinion.

Mr. Adams: I stipulate the witness' qualifications as a marine surveyor.

The Court: I know, but I mean to be able to testify [1136] that the two objects coming together at a knot and a half would produce that result or would not.

Mr. Black: I will withdraw the question.

Mr. Cluff: That is all, Mr. Alderson, thank you.
Mr. Crank. [1137]

ROBERT H. CRANK,

called as a witness on behalf of Libelant in rebuttal, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. R. H. Crank.

Direct Examination

Q. By Mr. Cluff: Mr. Crank, what is your occupation?

A. I am the owner and operator of a sport fishing boat.

Q. How long have you been engaged in sport fishing? A. About five or six years now.

Q. And in what waters?

A. Oh, San Pedro locally, Catalina Island, Santa Barbara Island.

Q. When you say "San Pedro locally", does that

(Testimony of Robert H. Crank.)

include the area to the southeast of the breakwater in the neighborhood of what they call Horseshoe Kelp? A. Yes; that is right.

Q. About how often in the course of the last five years have you fished that water in your live bait boat?

A. Well, hundreds of times, I would say.

Q. Do you recall the location of three anchored barges out there in the year 1940, the "Olympic", the "Samar", the "Rainbow", as we call it, and the "Point Loma"? A. I do. [1138]

Q. Do you know how long barges have been in the habit of anchoring in that area?

The Court: Oh, I think that has been asked and answered enough.

Mr. Cluff: Then I won't go into that aspect of the case with him.

Q. You were good enough to make up for Mr. Bullard from your working charts, Captain, a transcript on chart No. 5101, a designation of some pencil marks here about southeast of the breakwater light. First, I call your attention to a sort of a circular mark right at the point that is now marked with the word "Wreck" and I will ask you what that is.

A. Well, that is the approximate position of Horseshoe Kelp.

Q. Just what is Horseshoe Kelp as a physical matter?

A. Well, it is rocky formation or bank that is covered by kelp, and when there is a condition of

(Testimony of Robert H. Crank.)

slack tide, no current, clear water, this kelp can be seen, and it is in the shape of a horseshoe. That is where it gets its name.

Q. I call your attention to this chart 5101, with the word "Wreck", which indicates the position where the "Olympic" sank, and the line you have drawn indicates the approximate boundaries of Horseshoe Kelp? A. Yes.

Q. I notice several crosses on the chart. What is [1139] the significance, if any, of those crosses?

A. They were the approximate positions of these barges, and also places where there is rock piled, where we could fish from.

Q. Those are your private marks, which indicate good fishing conditions? A. Yes.

Q. I notice an outline in pencil, rather in the shape of a boomerang, is about the only thing I can think of.

Mr. Adams: It looks like a foot.

Mr. Cluff: Yes, a foot ready to step on the easterly shore there. I will ask what that mark indicates.

A. This fishing ground there is quite a large bank, and there are certain places that might be good for halibut; that would be sandy bottom; and there are many other places, not shown in the chart, that are covered by rocky formations, probably some of them very small, and they are feeding ground for larger fish; and we fish from all these different places. Some of these are discovered, incidentally, by drift fishing, or something like that. We may catch a kelp bass;

(Testimony of Robert H. Crank.)

then we sound with grapple hooks, and so forth and so on, to determine the position of this bank, and when we get right on the bank, we take a pelorus and take bearings—

Q. I don't want too much detail.

Mr. Adams: I move that the testimony be stricken [1140] concerning the good fishing grounds in that particular area. While that might be a matter of some interest to those inclined to pursue the art of fishing, I don't think it is material to this case.

The Court: The court will take judicial knowledge of that fact. I can remember 20 years ago going out to Horseshoe Kelp and fishing from a barge.

Q. By Mr. Cluff: The foot-shaped area indicates the approximate limits, as you have charted them?

A. Yes, approximately. They may extend as far as Balboa or Newport entrance.

Mr. Adams: It indicates the limits of what, Mr. Cluff?

Mr. Cluff: As I said, the limits of the fishing ground, as they are laid down on your chart?

The Court: We are only interested in Horseshoe Kelp, gentlemen.

Mr. Cluff: I have no further questions of the witness. I would like to put the chart in evidence as "Olympic's" next exhibit.

Mr. Adams: I object to a portion of that chart.

The Court: It will be admitted in so far as it describes Horseshoe Kelp.

The Clerk: "Olympic's" Exhibit No. 18.





(Testimony of Robert H. Crank.)

Cross-Examination

Q. By Mr. Adams: Mr. Crank, you haven't examined below the surface of the water any portion of Horseshoe Kelp, have you? [1141]

A. Yes; by soundings.

Q. I meant, by going below in a diver's suit?

A. No; I had no occasion to.

Q. Your description of the shape of that kelp is based upon your observations from aboard boats in the vicinity? A. Yes.

Q. And from having been able to see kelp from that boat? A. Yes.

Q. Did you take any measurements, from one end of the horseshoe to the other, in order to indicate the extent of the kelp bed there, or is that just approximate?

A. That's approximate.

Q. It is just an estimate?

A. Just approximate.

Mr. Cluff: No further questions. The Hermosa Amusement Company and Captain Anderson will rest.

The Court: Do any of the other libelants have any evidence they wish to introduce?

(No response.)

The Court: Have you any further evidence?

Mr. Adams: I would like to call Captain Anderson for one or two questions, and I would like to call Captain Sato for one or two questions. [1142]

JOAKIM M. ANDERSON

recalled as a witness in surrebuttal, testified further as follows:

Direct Examination

Q. By Mr. Adams: Captain Anderson, after you received from the Bureau of Marine Inspection and Navigation the mimeographed copy of specifications, which have been introduced in evidence, you had a discussion, did you not, with Captain Fisher concerning the requirements that the Hermosa had to meet in order to comply with those specifications, is that correct?

A. Yes, sir.

Q. And you were told, were you not, that, among other things, you were required to put in six bulkheads? A. No, sir.

Q. You stated that to make the changes that were necessary it would cost \$50,000, isn't that correct?

A. About that, two bulkheads.

Q. With two bulkheads? A. Yes.

Q. Where were those two bulkheads to be placed?

A. It was never mentioned.

Mr. Adams: No further questions.

Mr. Cluff: No further questions. [1143]

SYUNZI SATO,

recalled as a witness in surrebuttal, having been previously duly sworn, testified as follows:

Direct Examination

Q. By Mr. Adams: Captain Sato, you have seen a photostatic copy of this blueprint which I put before you, and which is "Olympic's" Exhibit No. 3, have you not? A. Yes, I have.

Q. In answering the questions that I am going to put to you, Captain, assume that the hull of the "Olympic" barge was about $\frac{7}{8}$ of an inch thick, and that the hull was made of iron, and that the "Olympic" was constructed in 1877, and that her length and beam were as shown on "Olympic's" Exhibit No. 3; and assume that the "Olympic" was constructed substantially as shown on "Olympic's" Exhibit No. 3. [1144] Now, Captain, based upon your experience, and what actually happened at the time of the collision, as you observed, and as you have testified to, have you an opinion as to whether the barge would have sunk at the time, and in the manner in which she did, after the collision, had the barge had additional water-tight bulkheads forward and aft of the hole stove in her port side?

Mr. Cluff: To which we object upon the ground that it is incompetent, irrelevant and immaterial: no foundation laid. The witness could see the events of the collision from his bridge. Obscured by the "Sakito's" bow, I don't see how he can testify as to the size of the hole, or anything else.

(Testimony of Syunzi Sato.)

The Court: I will admit it for what it is worth.

A. No, I think if it had the additional watertight bulkheads it would have kept afloat a little longer.

Q. By Mr. Adams: In your opinion might the barge have kept afloat five minutes longer?

A. It would depend on the number of additional bulkheads, and also as to the strength of the bulkheads.

Q. Supposing that there were two additional bulkheads on the forward and on the aft of the hole stove in her side.

Mr. Cluff: That is objected to as calling for the opinion of the witness, and the speculation of the witness.

The Court: Gentlemen, I could not help but think, and I have been thinking as you have been going along talking [1145] about these bulkheads, that both sides have offered the type of evidence relative to these bulkheads which was not satisfactory to the court. It seems to me that with your engineers and architects, and with the drawings of this vessel, that you could have testimony from somebody that actually knows what those bulkheads would do, if they were in place. This Captain, with all his training, there is nothing to show here that he knows what additional bulkheads would do, any more than you do or I do, and he is attempting to answer something which the evidence does not show, from his experience, and he is not in a posi-

(Testimony of Syunzi Sato.)

tion to give the court the kind of evidence that bears weight; and that is true with the other witnesses—all of the witnesses who have testified as to what would have happened if certain conditions were there. It seems to me that your naval architects could tell us absolutely, knowing the size of this hole, what bulkheads would have been required to have kept that boat afloat; and as far as this court is concerned the opinions given by witnesses on both sides are purely speculative; none of them are based upon training and engineering ability that furnishes the aid that the court should have.

Mr. Adams: I would like to make this statement: We have submitted this problem some time ago to a naval architect, and he could not, from the standpoint of a naval architect, locate the exact position of the bulkheads that [1146] he would put into the barge, without knowing the framework construction inside the hull of the "Olympic", and we were never in a position to obtain such information. That information was always in the possession of the libelant, and was never brought out.

The Court: You have your opportunity of obtaining it.

Mr. Adams: I don't know how, if the court please. Let me ask you, Mr. Cluff, have you got any other plans of the "Olympic", other than this blueprint?

Mr. Cluff: Not that I know of.

Mr. Adams: We submitted this blueprint to a

(Testimony of Syunzi Sato.)

naval architect. Have you any information of the inner framework of the "Olympic"?

Mr. Cluff: I don't know of any.

Mr. Adams: If there is such information I would be delighted to have you submit it.

The Court: The witness who was on the stand yesterday stated that he owned a companion ship.

Mr. Cluff: I don't think he owned it, your Honor. He was mate of the "Star of Italy".

Mr. Adams: What is needed is a description or drawing of her lines. If that could be furnished, we would be glad to submit that material to a naval architect, and have him testify. As I say, we have been working on that already. I would like to state to the court that this witness does have certain qualifications in this respect. [1147]

The Court: I have read his testimony as to his training and educational qualifications.

Mr. Adams: I perhaps should illustrate, by his testimony, that at the Tokyo Nautical School, where he studied for 5 years before he went to sea, he did take up, in the course of those studies, the construction of ships.

The Court: You may proceed. I have made my comments.

Q. By Mr. Adams: Captain, Sato, before you answer the question put to you——

The Court: Let him answer the question; then you can go into the question of qualification afterwards, so you won't have to repeat that long question again.

(Testimony of Syunzi Sato.)

Mr. Adams: Will the reporter read the question?
(Record read by the reporter.)

The Court: Of course, these regulations they sent out were general requirements, which were mimeographed.

Mr. Adams: General minimum requirements.

The Court: But there is nothing in there to indicate the number, size, or type, of bulkheads that should be placed. It is evidently a matter of discretion with the inspecting officer. It tells about sufficient lateral bulkheads, if I remember correctly, but that is general. Now you are talking about bulkheads that would be sufficient to have maintained the buoyancy of this boat for even a few minutes longer. We don't know, if it met the requirements, what bulkheads would have been necessary to have been put in [1148] there, so how can the witness answer the question without knowing the type of bulkheads that should have been in there to meet the requirements?

Mr. Adams: Of course, there is one thing I would like to make clear, in discussing this particular problem, and in eliciting testimony on this problem I would like to make it clear that it is our position that this order, having been given to the Hermosa Amusement Corporation by the Bureau of Marine Inspection and Navigation, and their admittedly failing to comply with it, is a violation of a statutory obligation; that the burden is upon the Hermosa Amusement Corporation to prove that not only such failure to comply with that regulation did not contribute to the collision, and any loss resulting

(Testimony of Syunzi Sato.)

from the collision, but it could not have contributed to such collision or loss.

The Court: It seems to me that the court is faced with several problems there, and I am speaking frankly: In the first place, if the story of the Captain is accepted, that they did not see the barge until they were within 200 meters of it, that would create a different situation than if the story of the others, that the visibility was some 2,000 feet or 1800 feet, was accepted. Now, if the visibility was 1800 feet, even if they were out there on an egg-shell it was the duty of the "Sakito Maru" to avoid hitting them. In other words, it is the same proposition—I may be drunk out in the center of the street, and if a [1149] man sees me and deliberately runs over me, I have violated every rule of the road, yet, at the same time, as we call it in civil practice, the last clear chance exists, and while our decisions usually do not recognize the phrase "last clear chance", in a very recent opinion by Judge Hand he comes out very definitely, and uses that very expression. I am trying to get the different pictures, because I don't know yet what my conclusions are going to be.

Mr. Adams: Without endeavoring to launch into an argument, may I just briefly state our position regarding that particular point: We will elaborate upon it with such opportunity as the court gives us. There were various estimates of visibility by witnesses produced by the libelant. I think if the court will study the testimony of those witnesses, and review the transcript where necessary, he will

(Testimony of Syunzi Sato.)

find that those estimates were given by witnesses who, at the time that they saw the "Sakito" approaching, were near the surface of the water. If the court will recall the testimony of each of these witnesses, the first thing they saw was a black object that was the black hull of the "Sakito"; as the "Sakito" came closer, then her superstructure could be seen, and eventually her masts. The court also will recall the testimony of Lieutenant Hewins and Lieutenant Bartlett that the fog lay in a strata, and Lieutenant Bartlett testified that when he was on the deck [1150] of the coast guard cutter, going out there, the visibility was much greater than it was on the bridge.

The Court: I am not going to attempt to analyze that testimony, but it seems to me that the findings of the court as to the visibility that existed at that time are going to depend a whole lot on the importance of this question of bulkheads.

Mr. Adams: The visibility varied with the location of the person. The "Sakito's" lookout on the bow was at least 35 feet above the surface of the water; those on the bridge over 50, and their visibility was different than those who were lower to the surface of the water, and we will, I think, show to the court's satisfaction, when we have a chance to demonstrate the testimony on that point, that that is correct, and that is the reason for the difference in the estimates on visibility.

Q. I would like to ask the Captain one further question, not on the question of bulkheads so much,

(Testimony of Syunzi Sato.)

but this is an answer to some of the skepticism that the court expressed yesterday: Captain, considering the facts which I have asked you to assume regarding the construction of the "Olympic", and considering the construction of the "Sakito" which you have testified to, in your opinion could the "Sakito Maru" have made a hole in the port side of the "Olympic" which penetrated, let us say, to the center or keel line of the "Olympic", if the "Sakito" at the time of [1151] the impact was only going one knot or one and a half knots per hour?

Mr. Cluff: Same objection heretofore noted.

The Court: Overruled.

(Question read by the reporter.)

A. It could. Do you want me to explain it?

Mr. Adams: Yes, will you explain it, please?

A. The displacement of the "Sakito" was over 10,000 tons at that time, and with the force of it going at the rate of a knot and a half at that time, it would have a very great momentum; and the "Olympic" being a craft over 60 years old, in my opinion I think the plates of the "Olympic", comparing with the new plates,—I don't think that the strength of the plates of the "Olympic" would have more than about a quarter, or possibly less, in strength; and in my opinion a craft that is over 60 years old, in many plates it would not have a strength of over 10 per cent, and the rest of it will be all put down to rust, and that, furthermore, the inside of the "Olympic" was practically empty—open.

(Testimony of Syunzi Sato.)

Q. Do you mean by that that there were no frameworks?

A. No, I don't mean that. It had a frame. It was rather empty—it was empty; and then, in order to tear the plates, and make a hole in the plates, you would not have to have very much force to do that; and then, once the plates are cut, it is a very easy matter for them to [1152] tear further.

Q. In other words, once the hull is penetrated of the "Olympic"—

A. Yes, that is what I mean, it would make it easier to tear the rest of it.

Q. Of what materials are the stem and the plates of the "Sakito" constructed? A. Steel.

Q. Captain Sato, do you think that the fact that the "Olympic" was anchored both by a bow and stern anchor, at the time of the impact, might have contributed to the penetration of the hull of the "Olympic" by the stem of the "Sakito"?

A. Surely, there would be more force attached to that than a boat which was floating around; that means, without anchors.

Q. In other words, the fact that the "Olympic" was anchored offered some resistance which would not be offered by a vessel which is simply floating, without being anchored? A. Yes.

The Court: When they are anchored they have a leeway, a certain distance that they float with those anchors, don't they?

Mr. Adams: Yes, until that distance is reached by being pushed through the water.

(Testimony of Syunzi Sato.)

The Court: That is, the limit reached by the anchors? [1153]

Mr. Adams: Yes, then you have a resisting force.

A. Yes.

Cross-Examination

Q. By Mr. Cluff: Captain Sato, you told us the other day, when you were on the witness stand, that after the impact the "Sakito" moved forward, after she came to a stop, 30 meters?

A. About 20 or 30 meters, I did.

Q. About 20 or 30 meters?

A. That is not definite.

Q. And it did that between 7:10-1/2, when the impact occurred, and 7:11, when you stopped the engines?

A. By that I meant between 15 and 20 seconds it did that.

Q. Between 15 and 20 seconds?

A. That is about.

Q. It went 20 or 30 meters between 15 and 20 seconds?

A. I can only give an estimate.

Q. How many meters is that in a minute, Captain?

The Court: Figure it out for yourself.

Mr. Cluff: Very well. That is all. No further questions.

Mr. Adams: That is all. We rest, if the court please.

Mr. Cluff: We rest.

The Court: Does everybody rest? Mr. Adams, heretofore [1154] you asked for a continuance, and

the court denied it because of the fact that there were written statements of the parties present, as to their testimony. Do you now feel that you have been at any disadvantage by reason of not having those parties present?

Mr. Adams: In answering that question I wish to answer it in a manner which I think is fair to the court, fair to counsel on the other side, and fair to my client. There is, of course, a conflict in the testimony as to the estimates of visibility and distance. Certain witnesses which we either produced here at the trial, or whose testimony we would obtain in a more elaborate and detailed form by the way of depositions, than is contained in their statements, would testify as to such matters. It is true that the testimony would be cumulative, but what the effect of cumulative testimony is upon the mind of a court, where the testimony is in conflict as to certain points, I don't know. So it is impossible for me to determine whether the cumulative effect of that testimony, even though it be cumulative, would have a material effect upon the court's mind in having the court resolve in favor of the contentions of the "Sakito Maru" any such conflicts or disputes in the testimony. I don't know whether I make myself clear.

The Court: It is clear, but the position of the court is that the court does not want to deprive the respondent here of an opportunity to present his case in the most [1155] favorable light. The Captain of the "Sakito" has given extensive oral testimony, and I may say that he is a very intelligent,

straightforward witness, a witness that the court feels that, if his findings do not altogether agree with the Captain's testimony, it is not going to be because I think that the Captain deliberately misstated it, but because of natural errors that come up from different viewpoints, of the collision. In other words, I feel that the Captain has, to the best of his ability, told the truth; that is the way the Captain has impressed the court; that he is a high type, a high class witness; and I felt that under those circumstances, it is difficult for the court to see where the rights of the "Sakito Maru" have been hurt by failure to bring those witnesses here. At the same time, I want everyone to feel that whatever the ultimate outcome of this case is, that they have had their day in court—each side.

Mr. Adams: I might make this statement; subject to not knowing what the cumulative effect of that testimony will be upon the court's mind—by that, I mean if there is only one witness who has testified one way, and there are ten others who have testified the other way, that if you have six more witnesses come in who may confirm the testimony of that one, that that person's testimony is, by virtue of the cumulative effect of the testimony on the point, corroborated, and perhaps accepted more readily by the one [1156] who is trying the facts. I have no way of telling.

The Court: These witnesses, in their statements, are almost cumulative to the second degree, because you have depositions here—some lengthy depositions—

Mr. Adams: Yes, that is correct.

The Court: And the very lengthy testimony of the Captain. In other words, Mr. Adams, I don't want anybody in the case to feel that they haven't had their day in court, and if there is any serious feeling that they have not had their day in court the court might be willing to give further consideration to it; but personally I don't think anything can be gained by it, but at the same time I don't want counsel to feel that the court has arbitrarily shut them off.

Mr. Adams: The court has reference to the witnesses who were not available because of being in Japan, and because of conditions?

The Court: The court has in mind the statements that were read into evidence yesterday. The court has in mind the fact that many months ago the court advised counsel that this case was going to proceed to trial as expeditiously as possible, and wanted you to get your depositions, and for reasons that appear by the affidavits, the depositions were not taken because they anticipated certain witnesses would be present in person.

Mr. Adams: Let me make this statement, so that our [1157] position will be clear: I personally think that the court has been fair in the court's action in respect to a continuance. When I say I personally think that, I don't mean that anyone else has expressed an opposite view from what I present; I am simply stating a personal opinion, and perhaps my principals coincide with that personal opinion. I think the court has been fair in that respect; I think if I were in the court's position I would have taken

like action. So, subject to what I have said before, that is about as much as I can say concerning our position on that point.

The Court: Now, gentlemen, I feel that the briefs should be filed as expeditiously as possible. It seems to me that this is a case where even the facts should be briefed, rather than orally argued, because I believe that each of you can present your case more logically in writing, when you take your transcript and analyze the testimony of each witness. I want to say that the court has no feeling that anybody has deliberately misstated the truth, on either side of the case. I think each side has tried to picture the events as they occurred, and as they remembered them. How long do you want? I feel that the case should move, as I stated before, to a rapid conclusion, because there are not only the two boats involved, but many people are involved.

(Short recess.)

[Endorsed]: Filed Jun. 26, 1942. [1158]

[Endorsed]: No. 10190. United States Circuit Court of Appeals for the Ninth Circuit. Sterling Carr, as Trustee in Bankruptcy of Nippon Yusen Kabushiki Kaisya, a Corporation, Bankrupt, and Fidelity and Deposit Company of Maryland, a Corporation, Appellants, vs. Hermosa Amusement Corporation, Ltd., a Corporation, and J. M. Andersen, Appellees. (And Fourteen Consolidated Appeals). Apostles on Appeals. Upon Appeals from the Dis-

trict Court of the United States for the Southern District of California, Central Division.

Filed July 13, 1942.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
For the Ninth Circuit

No. 10190

HERMOSA AMUSEMENT CORPORATION,
LTD., a California corporation,

Libelant,

vs.

The Motor Vessel "SAKITO MARU", her engines,
tackle, apparel, furniture, etc. and the master
and owner thereof, and N. Y. K. Lines, NIPPON
YUSEN KAISHA STEAMSHIP CO.,
a corporation,

Respondents.

NIPPON YUSEN KABUSHIKA KAISYA, a
corporation,

Claimant.

AND CONSOLIDATED CASES.

STIPULATION DESIGNATING PARTS OF
RECORD TO BE PRINTED AND CONSOL-
IDATING APPEALS.

Whereas, Nippon Yusen Kashubiki Kaisya, a corporation, and Fidelity and Deposit Company of

Item No.	Document	Pages of Certified Record
11.	Answer to cross-libel (omitting attached interrogatories propounded to cross-libelant)	97
12.	Notice of motion for continuance of trial and affidavit of James L. Adams in support thereof	109
13.	Answer of third party respondents to intervening libels	117
14.	Amendment to amended petition to bring in third party respondents (omitting order authorizing filing of same).....	128
15.	Minute order of court of September 3, 1941, denying motion for continuance of trial	139
16.	Written opinion of court dated October 31, 1941	142
17.	Stipulation as to reasonableness of stipulated decrees filed December 16, 1941.....	166
18.	Final decree entered March 17, 1942.....	180

(Cause B)

19.	Amended libel in intervention.....	186
20.	Answer to amended libel in intervention (omitting interrogatories).....	196
21.	Final decree entered December 19, 1941..	217
22.	Satisfaction of final decree.....	221

(Cause J)

23.	Amended libel	460
24.	Answer to amended libel.....	473

Item No.	Document	Pages of Certified Record
25.	Petition to bring in third party . respondents	490
26.	Answer of Hermosa Amusement Corporation, Ltd. to amended libel and petition..	503
27.	Final decree entered December 19, 1941...	509
28.	Satisfaction of final decree.....	515

(All Causes)

29.	All testimony and proceedings at the trial, omitting all testimony in reporter's transcript beyond page 868 thereof.	Original
30.	All exhibits offered at the trial and received in evidence, including the depositions of T. Yokota, G. Kato, S. Shimada, Spencer F. Hewins, David H. Bartlett and Philip J. Moynahan, with attached exhibits (except as otherwise provided in Paragraphs F and G of this stipulation).	Originals
31.	All testimony, stipulations and rulings of the court at hearing of motion for continuance on September 8, 1941.	Original

(Cause A)

32.	Motion of receiver in bankruptcy to intervene (omitting stipulation regarding hearing of motion)	678
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Pages of
Certified
Record

Item No.	Document	Pages of Certified Record
33. Order granting leave to intervene by receiver in bankruptcy	680	
34. Petition for appeal	682	
35. Assignment of errors.....	684	
36. Order allowing appeal.....	691	
37. Bond for costs on appeal.....	693	
38. Citation and acknowledgment of service thereof	2	
(Cause C)		
39. Petition for appeal.....	717	
40. Assignment of errors.....	719	
41. Order allowing appeal.....	725	
42. Bond for costs on appeal.....	727	
43. Citation and acknowledgment of service thereof	4	
(Cause B)		
44. Motion of receiver in bankruptcy to intervene	710	
45. Minute order denying motion of receiver..	712	
(Cause A)		
46. Stipulation waiving damage questions on appeal and withdrawing assignments with reference thereto	915	
(All Causes)		
47. Stipulation and order designating parts of record to be certified and contained in record on appeal	917	

Item No.

Document

Pages of
Certified
Record

48. Stipulation designating parts of record to be printed and consolidating appeals. (This stipulation.)
49. Statement of points on which appellants intend to rely on the appeal.

F. That the following described exhibits shall not be printed:

Exhibit No.

Description

Sakito J	Roll of graph recordings made by course recorder of "Sakito Maru".
Sakito O	Tabulations of vessels entering and leaving port on southern route between May 10 and September 4, 1940 (19 pages).

G. That in making up the printed record the Clerk of the Circuit Court of Appeals shall include only those portions of the following described exhibits (consisting of Coast and Geodetic Survey Charts) which show the scene of the collision, the entrance way to Los Angeles Harbor and any and all pencil or ink markings, writings or diagrams thereon and that all other portions of said exhibits need not be printed:

Exhibit No.	Description
Olympic 16	Chart No. 5143
Olympic 18	Chart No. 5101
Sakito K (Yokota 1).....	Chart No. 5101
Lt. Hewins No. 1.....	Chart No. 5101
Moynahan No. 1.....	Chart No. 5143
Sakito N	Chart No. 5143
Sakito P	Chart No. 5101
Sakito Q	Chart No. 5143

H. That the amended libel in intervention and answer to amended libel in intervention (Item Nos. 19 and 20) in Cause B are typical of like pleadings filed in the other intervening causes set forth below; that the issues with respect to liability raised by such pleadings in Cause B are substantially the same as the issues of liability raised in like manner in the other intervening causes set forth below; that the final decree (Item No. 21) in Cause B, and particularly the rulings contained therein as to liability and as to the dismissal of the petition to bring in third party respondents, are substantially the same as the final decrees and similar provisions included therein entered in the causes set forth below; and that the final decrees in certain of the causes set forth below, as indicated, have been satisfied in a manner similar to that shown by the satisfaction of final decree (Item No. 22) in Cause B:

Symbol	No. of Cause	Description and Title	Nature of Claim and Amount of Decree
C	1138-BH	Hermosa Amusement Corporation, a California corporation, Libelant, vs. the Motor Vessel "Sakito Maru", etc., Respondents, George W. Berger, Libelant in Intervention.	Loss of radio equipment—\$11,409.59*
D	1138-BH	Hermosa Amusement Corporation, a California corporation, Libelant, vs. the Motor Vessel "Sakito Maru", etc., Respondents, Norma Rubin, Lena Karsh, Florence, Lillian and Shirley Rose Karsh, etc., Libelants in Intervention.	Loss of life—\$5,500.00* Personal injuries and loss of personal effects—\$535.00* Loss of personal property and personal effects—\$1,305.42*
E	1138-BH	Hermosa Amusement Corporation, a California corporation, Libelant, vs. the Motor Vessel "Sakito Maru", etc., Respondents, Albertine K. Johnson, etc., Libelants in Intervention.	Loss of life—\$4,500.00*
F	1138-BH	Hermosa Amusement Corporation, a California corporation, Libelant, vs. the Motor Vessel "Sakito Maru", etc., Respondents, John Gilbert Montgomery, etc., Libelants in Intervention.	Personal injuries—\$625.00

*Final decree paid and satisfied.

Symbol	No. of Cause	Description and Title	Nature of Claim and Amount of Decree
G	1138-BH	Hermosa Amusement Corporation, a California corporation, Libelant, vs. the Motor Vessel "Sakito Maru", etc., Respondents, S. T. Elliott, Libelant in Intervention.	Personal injuries—\$300.00

I. That the amended libel (Item No. 23), answer to amended libel (Item No. 24), petition to bring in third party respondents (Item No. 25) and answer of Hermosa Amusement Corporation, Ltd. to amended libel and petition (Item No. 26) in Cause J are typical of like pleadings filed in the other independent causes set forth below; that the issues with respect to liability raised by such pleadings in Cause J are substantially the same as the issues of liability raised in like manner in the other independent causes set forth below; that the final decree (Item No. 27) in Cause J, and particularly the rulings contained therein as to liability and as to the dismissal of the petition to bring in third party respondents, are substantially the same as the final decree in similar provisions included therein entered in the causes set forth below; and that the final decrees in certain of the causes set forth below, as indicated, have been satisfied in a manner similar to that shown by the satisfaction of final decree (Item No. 28) in Cause J:

Symbol	No. of Cause	Description and Title	Nature of Claim and Amount of Decree
H	1146-Y	Roger S. Culp, etc., Libelant, vs. the Motor Vessel "Sakito Maru", etc., Respondents.	Loss of life—\$4,050.00*
I	1147-BH	Wilma Greenwood, etc., Libelant, vs. the Motor Vessel "Sakito Maru", etc., Respondents.	Loss of life—\$7,500.00*
K	1149-RJ	L. R. Ohiser, Libelant, vs. the Motor Vessel "Sakito Maru", etc., Respondents.	Personal injuries and loss of personal effects—\$385.00*
L	1154-B	J. Eldon Anderson, Libelant, vs. the Motor Vessel "Sakito Maru", etc., Respondents.	Personal injuries—\$300.00
M	1155-BH	Luey Sylvester, etc., Libelants, vs. the Japanese Motor Vessel "Sakito Maru", etc., Respondents.	Loss of life—\$5,000.00*
N	1296-BH	Wilfred Rasmussen, Libelant, vs. the Motor Vessel "Sakito Maru", etc., Respondents.	Personal injuries and loss of personal effects—\$1,000.00

J. That the petition for appeal (Item No. 39), assignment of errors (Item No. 40), order allowing appeal (Item No. 41), bond for costs on appeal (Item No. 42), citation and acknowledgment of service thereof (Item No. 43) filed in Cause C are typical of and substantially the same as similar documents and pleadings (included in the certified record but not the printed record) filed in all the other causes excepting Cause A.

K. That the motion of receiver in bankruptcy

*Final decree paid and satisfied.

to intervene (Item No. 32) and order granting leave to intervene by receiver in bankruptcy (Item No. 33) in Cause A are typical of and substantially the same as similar pleadings and orders (included in the certified record but not in the printed record) filed and entered in Causes C and D (as to appeal from final decree entered on March 23, 1942).

L. That the motion of receiver in bankruptcy to intervene (Item No. 44) and the minute order denying such motion (Item No. 45) in Cause B are typical of and substantially the same as similar pleadings and orders (included in the certified record but not in the printed record) filed and entered in Causes D (as to appeal from final decree entered on December 19, 1941), E, F, G, H, I, J, K, L, M and N.

M. That all pleadings and documents and all exhibits which are wholly or partially omitted from the printed record, in accordance with the foregoing provisions of this stipulation, but which have been transmitted to the Circuit Court of Appeals and included in the certified record may be considered a part of the record on appeal and may be referred to, if and when the need arises, to the same extent and with the same effect as if included in the printed record.

N. That in making up the printed record the Clerk of the Circuit Court of Appeals shall omit all formal captions and titles, except the caption upon the libels or amended libels (as the case may be) that are included in the printed record, substi-

tuting therefor the words "Title of Court and Cause"; that all verifications may be omitted, substituting therefor the word "Verified"; that in printing depositions only the names of the witnesses, the name of the party calling said witness, the place where and the date when the deposition was taken and the names of the commissioner or notary need be shown and that all notices attached to the depositions, and the captions and certificates of the depositions shall be omitted and that all papers and documents not herein expressly and specifically directed to be printed shall be omitted from the printed record.

Dated: July 15th, 1942.

ALFRED T. CLUFF,
HUGH B. ROTCHFORD,
GEO. H. MOORE,
CLUFF & BULLARD.

Proctors for Appellees.
LILLICK, GEARY, McHOSE &
ADAMS,
IRA S. LILLICK,
JAMES L. ADAMS.

Proctors for Appellants.

It is so ordered this 17th day of July, 1942.

FRANCIS A. GARRECHT,
Judge of the Circuit Court of
Appeals for the Ninth Cir-
cuit.

[Endorsed]: Filed Jul. 17, 1942.

[Title of Circuit Court of Appeals and Causes.]

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY ON THE APPEAL.

Come now Nippon Yusen Kabushiki Kaisya, a corporation, and Fidelity and Deposit Company of Maryland, a corporation, appellants herein in all the appeals in the foregoing causes, and Sterling Carr, receiver in bankruptcy for said Nippon Yusen Kabushiki Kaisya, appellant herein in the appeals in certain of the foregoing causes and make the following statement in conformity with Subdivision 6 of Rule 19 of the Rules of this Court:

These fifteen appeals are from separate decrees of the United States District Court for the Southern District of California entered in the foregoing causes, all of which arose out of the collision between the Motorship "Sakito Maru" and the Fishing Barge "Olympic II" about three miles south of the entrance way to Los Angeles Harbor on September 4, 1940. The decrees were made pursuant to a holding by the District Court that the "Sakito Maru" was solely at fault for the collision.

All of the foregoing causes were consolidated for trial and, by a stipulation of the proctors for the appellants and the appellees and an order of the District Court, the record on appeal with respect to the fifteen appeals was also consolidated. By a further stipulation of such proctors, which concurrently with the filing of this statement will be submitted to this Court for approval, the printed record with respect to the fifteen appeals likewise

will be consolidated and it is agreed that all of such appeals may be heard, considered and determined together.

The appeals call for a trial de novo and the appellants contend that the District Court erred in the respects set forth in the Assignment of Errors filed in such proceedings. The Assignments of Errors in said fifteen appeals are the same in so far as the question of liability for the collision is concerned except that there are a few additional assignments contained in the Assignment of Errors filed in the main cause which was entitled in the District Court "Hermosa Amusement Corporation, Ltd., a California corporation, Libelant, vs. the Motor Vessel 'Sakito Maru', etc., No. 1138-BH". By stipulation of proctors for the appellants and appellees, Assignment Nos. I and XXVIII contained in the Assignment of Errors in the cause just mentioned have been withdrawn.

The aforementioned Assignments of Errors in the fifteen appeals were prepared with consideration to the avoidance of duplication and to the elimination of assignments which will not be relied upon, and the appellants therefore hereby formally adopt the Assignments of Errors in the fifteen appeals, subject to the circumstances set forth in the preceding paragraph, as their statement of points on which they intend to rely on the appeal.

Without waiving any of the errors specifically assigned in the aforementioned Assignments of Errors, the appellants further state for the information of this Court that the general points involved in these appeals are that the District Court erred

in finding that the Motor Vessel "Sakito Maru" was solely at fault for the collision and in not finding that the "Olympic II" was at fault for the collision.

A stipulation has been entered into by proctors for the appellants and appellees designating the parts of the record necessary for the consideration of the points involved in these appeals.

LILLICK, GEARY, McHOSE &
ADAMS,
IRA S. LILLICK,
JAMES L. ADAMS,
Proctors for Appellants.

Received copy of the within Statement of Points on which Appellants Intend to Rely this 16th day of July, 1942.

CLUFF & BULLARD,
Proctors for Appellees.

[Endorsed]: Filed Jul. 17, 1942. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

At a stated term, to wit: The October Term 1941, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the third day of August in the year of our Lord one thousand nine hundred and forty-two.

Present: Honorable Curtis D. Wilbur, Senior Circuit Judge, Presiding, Honorable William Denman, Circuit Judge, Honorable Clifton Mathews, Circuit Judge.

[Title of Causes.]

ORDER GRANTING MOTION TO INTERVENE AND TO BE SUBSTITUTED AS PARTY APPELLANT.

The motion of Sterling Carr, Trustee in Bankruptcy for Nippon Yusen Kabushiki Kaisya, for an order authorizing him as such trustee to intervene in the above entitled action and to be substituted for Nippon Yusen Kabushiki Kaisya, a corporation, and Sterling Carr, Receiver in Bankruptcy for Nippon Yusen Kabushiki Kaisya, came on regularly to be heard this date, Mr. Robert Ransome, appearing and orally presenting motion on behalf of proctors for Sterling Carr, Trustee, etc., and good cause therefor appearing,

It Is Ordered (1) That Sterling Carr, Trustee in Bankruptcy for Nippon Yusen Kabushiki Kaisya, a corporation, be, and he hereby is permitted to intervene in the within appeals;

(2) That Sterling Carr, Trustee in Bankruptcy of Nippon Yusen Kabushiki Kaisya, a corporation, be, and he hereby is substituted in the place and stead of Nippon Yusen Kabushiki Kaisya, a corporation, and Sterling Carr, Receiver in Bankruptcy of Nippon Yusen Kabushiki Kaisya, a corporation.

[Title of Circuit Court of Appeals and Causes.]

**STIPULATION FOR USE OF
PHOTOGRAPHIC EXHIBITS ON APPEAL**

It Is Hereby Stipulated, between the parties here-to through their respective counsel, that the following photographic exhibits introduced at the trial herein may be used and considered by the United States Circuit Court of Appeals on the appeal herein in their original form without the necessity of preparing or furnishing copies thereof. The photographic exhibits referred to are as follows:

“Olympic” Nos. 1, 2, 3, 5 and 6, being photographs and blueprint of the “Olympic II”.

Yokota’s Exhibits 4-14, inclusive, attached to deposition of Yokota.

Dated: August 5, 1942.

ALFRED T. CLUFF

ALLAN F. BULLARD

H. C. B. ROTCHFORD

GEO. H. MOORE

Proctors for Appellees

LILLICK, GEARY, McHOSE

& ADAMS

IRA S. LILLICK

Proctors for Appellants.

So Ordered:

FRANCIS A. GARRECHT

United States Circuit Judge

[Endorsed]: Filed Aug. 10, 1942.

